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JAPANESE CONSTITUTION

Kades
Vol 8

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AND PRELIMINARY PROPOSALS

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2. Memorandum re Constitutional Reform dated 1 February 1946.
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4. C-in-C Outline of Constitution, Sunday, 3 February 1946.
5. "Gist" of Matsumoto Revision submitted 7 February 1946.
6. Steering Committee Minutes , 5, 6, 7, 8, 9, 11 and 12 February 1946.
7. Check sheet dated 10 Feb 46 submitting Government Section draft with explanatory note.
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21. Memorandum for Record dated 12 March 1946.

22. Check sheet to Chief, Government Section, dated 22 March 1946.

23. Simplified Version of Constitution submitted by Japanese 22 April 1946.

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25. Check sheet to C-in-C re Developments during Diet Debate, dated 17 July 1946.

26. Government Section proposed changes in Japanese draft.

27. Memorandum to Chief of Staff, 9 January 1947.

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Tentative Revision of the Meiji Constitution
By Joji Matsumoto, 4 January, 1946 [Japanese]

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Plan A

乞御返却

憲法改正私案（一月四日稿）　松本丞治

第三條　天皇ハ至尊ニシテ侵スヘカラス

第七條　天皇ハ帝國議會ヲ召集シ其ノ開會、閉會及停會ヲ命ス

天皇ハ衆議院ノ解散ヲ命ス但シ同一事由ニ基キ重ネテ解散ヲ命スルコトヲ得ス

第八條　天皇ハ公共ノ安全ヲ保持シ又ハ其ノ災厄ヲ避グル爲緊急ノ必要ニ由リ帝國議會閉會ノ場合ニ於テ法律ニ代ルヘキ勅令ヲ發ス但シ議院法ノ定ムル所ニ依リ帝國議會常直委員ノ諮詢ヲ經ヘシ

此ノ勅令ハ次ノ會期ニ於テ帝國議會ニ提出スヘシ若シ議會ニ於テ承諾セサルトキハ政府ハ將來ニ向テ其ノ效力ヲ失フコトヲ公布スヘシ

第九條　天皇ハ法律ヲ執行スル爲ニ又ハ行政ノ目的ヲ達スル爲ニ必

要ナル命令ヲ發シ又ハ發セシムル但シ命令ヲ以テ法律ヲ變更スルコトヲ得ス

第十一條　天皇ハ陸海軍ヲ統帥ス

陸海軍ノ編制及常備兵額ハ法律ヲ以テ之ヲ定ム

第十二條　天皇ハ帝國議會ノ協賛ヲ以テ戰ヲ宣シ和ヲ講ス

前項ノ場合ニ於テ內外ノ情形ニ因リ帝國議會ノ召集ヲ待ツコト能ハサル緊急ノ必要アルトキハ議院法ノ定ムル所ニ依リ帝國議會常置委員ノ諮詢ヲ經ルヲ以テ足ル此ノ場合ニ於テハ次ノ會期ニ於テ帝國議會ニ報告シ其ノ承諾ヲ求ムヘシ

第十三條　天皇ハ諸般ノ條約ヲ締結ス但シ法律ヲ以テ定ムヘキ事項ニ關スル條約又ハ國庫ニ重大ナル負擔ヲ生スヘキ條約ヲ締結スルニハ帝

國議會ノ協賛ヲ經[redacted]ヲ要ス

前項但書ノ場合ニ於テ特ニ緊急ノ必要アルコト前條第二項ト同シキトキハ其ノ條規ニ依ル

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第二十八條　日本臣民ハ安寧秩序ヲ妨ケサル限ニ於テ信教ノ自由ヲ有ス

第三十一條　日本臣民ハ前數條ニ掲ケタル外凡テ法律ニ依ルニ非サレ[redacted]其ノ自由及權利ヲ侵サルルコトナシ

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第三十九條ノ二　衆議院ニ於テ引續キ三回其ノ總員三分ノ二以上ノ多數ヲ以テ可決シテ參議院ニ移シタル法律案ハ參議院ノ議決アルト否トヲ問ハス帝國議會ノ協賛ヲ經タルモノトス

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兩議院ノ議員ハ各々其ノ院ノ總員三分ノ一以上ノ賛成ヲ待テ臨時會ノ召集ヲ求ムルコトヲ得

第四十四條　帝國議會ノ開會閉會會期ノ延長及停會ハ兩院同時ニ之ヲ行フヘシ

衆議院解散ヲ命セラレタルトキハ參議院ハ同時ニ閉會セラルヘシ

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第四十八條　兩議院ノ會議ハ公開ス但シ其ノ院ノ決議ニ依リ秘密會ト爲スコトヲ得

第五十三條　兩議院ノ議員ハ現行犯罪又ハ内亂外患ニ關ル罪ヲ除ク外會期中其ノ院ノ許諾ナクシテ逮捕セラルルコトナシ會期前ニ逮捕セ

ラレタル議員ハ其ノ院ノ要求アルトキハ會期中之ヲ釋放スヘシ

第五十五條　國務各大臣ハ天皇ヲ輔弼シ一切ノ國務ニ付帝國議會ニ對シテ其ノ責ニ任ス

凡テ法律勅令其ノ他國務ニ關ル詔勅ハ國務大臣ノ副署ヲ要ス軍ノ統帥ニ付亦同シ

衆議院ニ於テ國務各大臣ニ對スル不信任ヲ議決シタルトキハ解散アリタル場合ヲ除ク外其ノ職ニ留ルコトヲ得ス

第五十五條ノ二　國務各大臣ヲ以テ內閣ヲ組織ス

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參議院ハ衆議院ノ議決シタル豫算ニ付增額ノ修正ヲ爲スコトヲ得ス

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第六十七條　法律ノ結果ニ由リ又ハ法律上政府ノ義務ニ屬スル歲出ハ政府ノ同意ナクシテ帝國議會之ヲ廢除シ又ハ削減スルコトヲ得ス

第六十九條　避クヘカラサル豫算ノ不足ヲ補フ爲ニ又ハ豫算ノ外ニ生シタル必要ノ費用ニ充ツル爲ニ豫備費ヲ設クヘシ

豫備費ヲ以テ豫算ノ外ニ生シタル必要ノ費用ニ充ツルトキハ議院法ノ定ムル所ニ依リ帝國議會常置委員ノ諮詢ヲ經ヘシ

避クヘカラサル豫算ノ不足ヲ補フ爲ニ又ハ豫算ノ外ニ生シタル必要ノ費用ニ充ツル爲ニ豫備費外ニ於テ支出ヲ爲ストキハ亦前項ノ條規ニ依ル

第七十條　公共ノ安全ヲ保持スル爲緊急ノ需要アル場合ニ於テ內外ノ情形ニ因リ政府ハ帝國議會ヲ召集スルコト能ハサルトキハ勅令ニ依リ財政上必要ノ處分ヲ爲スコトヲ得但議院法ノ定ムル所ニ依リ帝國議會常置委員ノ諮詢ヲ經ヘシ

前項ノ場合ニ於テハ次ノ會期ニ於テ帝國議會ニ提出シ其ノ承諾ヲ求ムルヲ要ス

第七十一條　帝國議會ニ於テ豫算ヲ議定セス又ハ豫算成立ニ至ラサルトキハ政府ハ會計法ノ定ムル所ニ依リ暫定豫算ヲ作成シ豫算成立ニ至ルマテノ間之ヲ施行スヘシ

此ノ場合ニ於テハ會計年度開始後（帝國議會ニ）提出シ其ノ年度ノ豫算ト共ニ前項ノ暫定豫算ヲ提出シ其ノ承諾ヲ求ムルヲ要ス

第七十三條　將來此ノ憲法ノ條項ヲ改正スルノ必要アルトキハ勅命ヲ以テ議案ヲ帝國議會ノ議ニ付スヘシ

兩議院ノ議員ハ各々其ノ院ノ總員三分ノ一以上ノ賛成ヲ待テ改正ノ議案ヲ發議スルコトヲ得

前二項ノ場合ニ於テ兩議院ハ各々其ノ總員三分ノ二以上出席スルニ非サレハ議事ヲ開クコトヲ得ス出席議員三分ノ二以上ノ多數ヲ得ルニ非サレハ改正ノ議決ヲ爲スコトヲ得ス

天皇ハ帝國議會ノ議決シタル憲法改正ヲ裁可シ其ノ公布ヲ命ス

又執行

第七十五條　削除

補則

凡テ現行ノ法律命令ニシテ此ノ憲法改正ノ條規ニ依リ法律ヲ以テ定ムルヲ要スル事項ヲ定メタルモノハ其ノ廢止又ハ改正セラルルマテノ間ハ仍[redacted]効力ヲ有ス

此ノ憲法改正中第八條　第十二條　第十三條　第三十四條　第四十二條　第五十五條ノ二　第五十六條　第五十七條　第六十一條　第六十六條　第六十九條　第七十條及第七十一條ノ改正ハ各々其ノ執

第三十三條

第三十九條ノ二

第四十四條

行ニ必要ナル法律ノ制定施行セラルルマテ其ノ効力ヲ生セサルモノトシ其ノ間ハ仍舊法ノ條規ニ依ル

命令

備考

本私案中ノ條文ノ數字ハ便宜上例ヘハ第〇條ノ二ト言フカ如キモノトセルモ改正案ニ於テハ條文ノ繰上繰下ヲ爲シ之ヲ整理スルモノトス。其ノ結果改正後ノ憲法ハ七十五條ト爲ル

全文

(A)- E 1

Tentative Revision of the Meiji Constitution
By Joji Matsumoto, 4 January, 1946 [English]

A 17.1

(A) TENTATIVE REVISION OF THE CONSTITUTION

By Joji Matsumoto

(January 4, 1946)

(1. The present draft gives only the Articles that have been revised, or deleted.

Parts, amended or added, are underlined. Articles with no underlined part indicate that they are unchanged but for certain ommission or omissions.

2. In order to facilitate comparison the original numbers for Articles are retained as far as possible, such numbers for additional Articles as XXX-ii or LV-ii are used simply for the purpose of indicating where they belong.

3. When all the Articles are properly renumbered by numbering up some and numbering down other, the entire text of the revised Constitution will consist of 75 Articles.)

Article III. The Emperor is <u>exhalted</u> and inviolable.

Article VII. The Emperor convokes the Imperial Diet, opens, closes, and prorogues it.

The Emperor dissolves the House of Representatives; <u>but he may not dissolve it over again for the one and same reason.</u>

Article VIII. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law. <u>But in so doing, he shall consult the Diet Standing Committee in advance, according to the provisions of the Diet Law.</u>

Such Imperial Ordinances are to be laid before the Imperial Diet at its next session,

<u>and</u>

and when the Diet does not approve the said Ordinances, the government shall declare them to be invalid for the future.

Article IX. The Emperor issues or causes to be issued the Orders necessary for executing the laws, or for accomplishing administrative aims. But no Order shall in any way alter any of the existing laws.

Article XI. The Emperor has the supreme command of the armed forces. The organization and peace standing of the armed forces shall be determined by law.

Article XII. The Emperor declares war and makes peace, with the advice and approval of the Imperial Diet.

As regards the provision of the preceding paragraph, in the case of emergency when the conditions at home and abroad allow no time for convocation of the Imperial Diet, prior consultation with the Diet Standing Committee as provided by law shall suffice. But in such a case, the action shall be laid before the Imperial Diet for approval at its next session.

Article XIII. The Emperor concludes various treaties, provided that in order to conclude treaties such as concern the matters that must be determined by law, or that may place a serious burden on the State Treasury, he shall obtain prior approval of the Imperial Diet.

As regards the above provision, in case of emergency similar to that mentioned in Paragraph 2 of the preceding Article, the provision of the said Article shall apply.

Article XV. The Emperor awards honors.

Article XX. Japanese subjects are amenable to ~~military~~ service, according to the provisions of law.

Article XXVIII. Japanese subjects shall, within limits not prejudiced to peace and order, enjoy freedom of religious belief.

Article XXXI.

A 19

Article XXXI. All rights and liberties of Japanese subjects, besides those mentioned in the preceding several Articles, shall not be impaired in all circumstances except by law.

Article XXXII. Delete.

Article XXXIII. The Imperial Diet shall consist of two Houses, a House of Councillors and a House of Representatives.

Article XXXIV. The House of Councillors shall, in accordance with the provisions of the House of Councillors Law, be composed of members elected, or appointed by the Emperor.

Article XXXIX. A Bill which, after having been passed three times in succession of the House of Representatives by majority of more than two-thirds, is sent to the House of Councillors shall be considered as approved by the Imperial Diet regardless of whether or not it is adopted by the House of Councillors.

Article XLII. A session of the Imperial Diet shall last during a period, not less than three months, as is provided for by the Diet Law. In case of necessity the session may be prolonged by Imperial Order.

Article XLIII. When urgent nessesity arises, an extraordinary session may be convoked, in addition to the ordinary session.

The duration of an extraordinary session shall be determined by Imperial Order.

The members of both Houses may, with the concurrence of more than one-third of the total members of their respective Houses, may apply for convocation of an extraordinary session.

Article XLIV. The opening, closing, prolongation of the Imperial Diet, shall be effected simultaneously by both Houses.

In case the House of Representatives has been ordered to dissolve, the House of Councillors shall at the same time be closed.

Article XLV.

Article XLV. When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the Imperial Diet shall be convoked within three months from the day of dissolution.

Article XLVIII. The deliberations of both Houses shall be held in public. The deliberations may, however, by decision of the respective Houses, be held in secret sitting.

Article LIII. Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with internal commotion or foreign trouble. Any member who has been arrested prior to the session shall upon demand of the House be released for the duration of the session.

Article LV. The respective Ministers of State shall render assistance and advice to the Emperor, and be responsible to the Imperial Diet with respect to all affairs of the State.

All laws, Imperial Ordinances and Imperial Rescripts relating to the affairs of the State require the countersignature of a Minister of State. The same provision shall apply to those relating to the Supreme Command of the armed forces.

In case the House of Representative has passed a vote of non-confidence against a Minister of State, he shall not remain in office except in the case the House has been dissolved.

Article LV-ii. The Cabinet shall be composed of the Ministers of State.

The organization of the Cabinet shall be determined by law.

Article LVI. The Privy Councillors shall deliberate upon important matters of State, when they have been consulted by the Emperor.

The Organization of the Privy Council shall be determined by law.

Article LVII.

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Article LVII. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

The organization of the Courts of Law shall be determined by law.

All cases of administrative litigation shall be under the jurisdiction of the Courts of Law, as provided for separately by law.

Article LXI. Delete.

Artocle LXV. The Budget shall be first laid before the House of Representatives. A Budget passed by the House of Representatives shall not be amended by the House of Councillors for any increase thereof.

Article LXVI. The expenditures of the Inner Court of the Imperial House shall be defrayed every year out of the National Treasury, according to a fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article LXVII. Such annual expenditures as may have arisen by the effect of law, or that appertain to the legal obligation of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article LXIX. In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided for.

In case any disbursement is to be made from the Budget to requirements unprovided for in the Budget, the Diet Standing Committee shall be consulted in advance according to the provisions of the Diet Law.

In

In case disbursements are to be made outside the Budget in order to supply deficiencies, which are unavoidable, in the Budget, or to meet requirements unprovided for in the same, the provision of the preceding Paragraph shall also apply.

Article LXX. In case of urgent need for the maintenance of public safety, the Government, when the Imperial Diet cannot be convoked owing to the external and internal condition of the country, may take all the necessary financial measures through an Imperial Ordinance, provided that the Diet Standing Committee shall be consulted in advance according to the provisions of the Diet Law.

In the case mentioned in the preceding Paragraph, the matter shall be submitted to the Imperial Diet at its next session, and its approval thereon shall be obtained.

Article LXXI. When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existense, the Government shall compile a provisional Budget ~~carried out~~ according to the provisions of the Account Law, and carry it out until the regular Budget is brought into existense.

In the case mentioned in the preceding Paragraph, the Imperial Diet, if not in session, shall be speedily convoked, and the Provisional Budget shall be submitted to it for approval.

Article LXXIII. When it has become necessary to amend the provisions of the present Constitution, a project to that effect shall be submitted to the Imperial Diet by Imperial Order.

Members of both Houses may with the concurrence of not less than one half of the total members of their respective Houses, propose deliberation on the project.

In

In the case mentioned in the preceding two Paragraphs, neither House may open the debate, unless not less than two-thirds of the whole number of Members are present; and no amendment may be passed, unless a majority of not less than two-thirds of the Members present is obtained.

The Emperor approves the amendments to the Constitution passed by the Imperial Diet, and orders the promulgation and enforcement thereof.

Article LXXV. Delete.

Supplementary Rules

The Orders currently in force, which specify matters to be determined by law under the provision of the present Constitution, shall remain valid until they are repealed or revised.

Of the present amendments to the Constitutions, those under Articles VIII, XII, XIII, XXXIII, XXXIV, XXXIX-ii, XLII, XLIV, LV-ii, LVI, LVII, LXI, LXVI, LXIX, LXX, and LXXI, shall not come into effect until the necessary laws and orders are promulgated and enforced, and the provisions of the old laws shall meanwhile remain in force.

Tentative Revision of the Meiji Constitution
By Joji Matsumoto, 4 January, 1946 [Japanese]

A 24.1

Plan 13.

乙御返却

憲法改正案（乙案）

「大日本帝國憲法」ヲ「日本國憲法」ニ改ム

「臣民」ヲ「國民」ニ改ム

「帝國議會」ヲ「國會」ニ改ム

第一條

（A案）（第一條）　日本國ハ萬世一系ノ天皇統治權ヲ總攬シ此ノ憲法ノ條規ニ依リ之ヲ行フ

（第四條）　削除

（B案）（第一條）　日本國ノ統治權ハ萬世一系ノ天皇之ヲ總攬シ此ノ憲法ノ條規ニ依リ之ヲ行フ

（第四條）　削除

（C案）（第一條）　日本國ハ君主國トシ萬世一系ノ天皇ヲ以テ君主トス

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（第〇條）　天皇ハ統治權ヲ總攬シ此ノ憲法ノ條規ニ依リ之ヲ行フ

（D案）（第一條）　日本國ハ萬世一系ノ天皇之ニ君臨ス

（第〇條）　天皇ハ此ノ憲法ノ條規ニ依リ統治權ヲ行フ

第二條　削除

第三條

（A案）天皇ハ統治權ヲ行フニ付責ニ任スルコトナシ

（第二項）天皇ノ一身ハ侵スヘカラス

（B案）天皇ハ國ノ元首ニシテ侵スヘカラス

（C案）天皇ノ一身ハ侵スヘカラス

第四條　（前掲第一條參照）

第五條　現狀

第六條　天皇ハ法律ヲ裁可シ其ノ公布ヲ命ス

第七條　天皇ハ國會ヲ召集シ其ノ開會閉會及停會ヲ命ス

天皇ハ衆議院ノ解散ヲ命ス但シ同一事由ニ基ヅキ重ネテ解散ヲ命スルコトヲ得ス

第八條　天皇ハ公共ノ安全ヲ保持シ又ハ其ノ災厄ヲ避クル爲緊急ノ必要ニ由リ國會閉會ノ場合ニ於テ國會常置委員會ニ諮詢シ法律ニ代ルヘキ勅令ヲ發ス

此ノ勅令ハ次ノ會期ニ於テ國會ニ提出スヘシ若國會ニ於テ承諾セサルトキハ政府ハ將來ニ向テ其ノ效力ヲ失フコトヲ公布スヘシ

第九條　天皇ハ法律ヲ執行スル爲ニ又ハ此ノ憲法ニ於テ法律ヲ以テ定ムヘキモノトシタル事項ニ關ル場合ヲ除ク外行政ノ目的ヲ達スル爲ニ必要ナル命令ヲ發シ又ハ發セシム但シ命令ヲ以テ法律ヲ變更スルコトヲ得ス

第一〇條　天皇ハ官吏ヲ任免ス

第一一條　削除

第一二條　削除

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第一三條　天皇ハ諸般ノ條約ヲ締結ス但シ此ノ憲法ニ於テ法律ヲ以テ定ムヘキモノトシタル事項ニ關ル條約又ハ國ニ重大ナル義務ヲ負ハシムル條約ノ締結ハ國會ノ協賛ヲ經ルヲ要ス

前項ノ場合ニ於テ國會ノ召集ヲ待ツコト能ハサル緊急ノ必要アルトキハ國會常置委員會ノ諮詢ヲ經ルヲ以テ足ル此ノ場合ニ於テハ次ノ國會ニ報告シ其ノ承諾ヲ求ムルヲ要ス

條約ハ公布ニ依リ法律ノ效力ヲ有ス

第一四條　削除

第一五條　天皇ハ榮典ヲ授與ス

第一六條　現狀

第一七條　現狀

第二章　國民權利義務

第一八條　現狀

第一九條　日本國民ハ法律命令ノ定ムル所ノ資格ニ應シ均ク公務ニ參與スルコトヲ得

第二〇條　削除

第二一條　現狀

第二二條　日本國民ハ居住及移轉ノ自由ヲ有ス

公益ノ爲必要ナル制限ハ法律ノ定ムル所ニ依ル

第二三條　現狀

第二四條　現狀

第二五條　日本國民ハ其ノ住所ヲ侵サルルコトナシ

公益ノ爲必要ナル制限ハ法律ノ定ムル所ニ依ル

第二六條　日本國民ハ信書ノ秘密ヲ侵サルルコトナシ

公安ヲ保持スル爲必要ナル制限ハ法律ノ定ムル所ニ依ル

第二七條　現狀

第二八條　日本國民ハ信教ノ自由ヲ有ス

公安ヲ保持スル爲必要ナル制限ハ法律ノ定ムル所ニ依ル

第二九條　日本國民ハ言論出版集會及結社ノ自由ヲ有ス

公安ヲ保持スル爲必要ナル制限ハ法律ノ定ムル所ニ依ル

第三〇條　日本國民ハ法律ノ定ムル所ニ從ヒ請願ヲ爲スコトヲ得

第三〇條ノ二　日本國民ハ法律ノ定ムル所ニ從ヒ教育ヲ受クルノ權利及義務ヲ有ス

第三〇條ノ三　日本國民ハ法律ノ定ムル所ニ從ヒ勤勞ノ權利及義務ヲ有ス

第三〇條ノ四　日本國民ハ本章ニ掲ケタルモノノ外凡テ法律ニ依ラスシテ其ノ自由及權利ヲ侵サルルコトナシ

第三一條　削除

第三二條　削除

第三章　國會

第三三條　國會ハ衆議院參議院ノ兩院ヲ以テ成立ス

第三四條　（A案）衆議院ハ法律ノ定ムル所ニ依リ普通平等直接及秘密ノ原則ニ從ヒ選擧セラレタル議員ヲ以テ組織ス

（B案）衆議院ハ法律ノ定ムル所ニ依リ公選セラレタル議員ヲ以テ組織ス

第三五條

（A案）參議院ハ法律ノ定ムル所ニ依リ職域地域及學識經驗ニ據リ選擧又ハ勅任セラレタル議員ヲ以テ組織ス

（B案）參議院ハ法律ノ定ムル所ニ依リ職域及地域ヲ代表スル者並ニ學識經驗アル者ヨリ選擧又ハ勅任セラレタル議員ヲ以テ組織ス

（C案）參議院ハ法律ノ定ムル所ニ依リ選擧又ハ勅任セラレタル議員ヲ以テ組織ス

第三六條　現　狀

第三七條　現　狀

第三八條　現　狀

第三九條　現　狀

第三九條ノ二　衆議院ニ於テ引續キ三回其ノ總議員三分ノ二以上ノ多

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數ヲ以テ可決シテ參議院ニ移シタル法律案ハ參議院ノ議ヲアルト否トヲ問ハス國會ノ協賛ヲ經タルモノトス

第四〇條　現狀

第四一條　現狀

第四二條　國會ノ會期ハ三箇月以上トシ勅命ヲ以テ之ヲ定ム必要アル場合ニ於テハ勅命又ハ國會ノ議決ヲ以テ之ヲ延長スルコトヲ得

第四三條　臨時ノ必要アル場合ニ於テ常會ノ外臨時會ヲ召集スヘシ兩議院ノ議員ハ各〻其ノ院ノ總議員三分ノ一以上ノ贊成ヲ得テ臨時會ノ召集ヲ求ムルコトヲ得

臨時會ノ會期ヲ定ムルハ勅命ニ依ル必要アル場合ニ於テハ勅命又ハ國會ノ議決ヲ以テ之ヲ延長スルコトヲ得

第四四條　國會ノ開會閉會會期ノ延長及停會ハ兩院同時ニ之ヲ行フヘシ

國會開會中ニ衆議院解散ヲ命セラレタルトキハ參議院ハ同時ニ閉會ス

第四五條　衆議院解散ヲ命セラレタルトキハ勅命ヲ以テ新ニ議員ヲ選擧セシメ解散ノ日ヨリ三箇月以内ニ臨時會ヲ召集スヘシ但シ其ノ期間内ニ常會ヲ召集スル場合ハ此ノ限ニ在ラス

第四六條　現　狀

第四七條　現　狀

第四八條　兩議院ノ會議ハ公開ス但シ其ノ院ノ決議ニ依リ秘密會ト爲スコトヲ得

第四九條　現　狀

第五〇條　現　狀

第五一條　現　狀

第五二條　現　狀

第五三條　兩議院ノ議員ハ現行犯罪又ハ內亂外患ニ關ル罪ヲ除ク外會期中其ノ院ノ許諾ナクシテ逮捕セラルルコトナシ會期前ニ逮捕セラレタル議員ハ其ノ院ノ要求アルトキハ會期中之ヲ釋放スヘシ

第五四條　現狀

第五四條ノ二　國會ニ議院法ノ定ムル所ニ依リ常置委員會ヲ置ク

第四章　國務大臣

第五五條　國務各大臣ハ天皇ヲ輔弼シ其ノ責ニ任ス

凡テ法律勅令其ノ他國務ニ關ル詔勅ハ國務大臣ノ副署ヲ要ス（第三項）

國務大臣ハ衆議院ニ於テ不信任ヲ議決セラレタルトキハ解散アリタル場合ヲ除ク外其ノ職ニ留ルコトヲ得ス

第五五條ノ二　國務各大臣ヲ以テ內閣ヲ組織ス

內閣ノ官制ハ法律ヲ以テ之ヲ定ム

第五六條　削除

第五　司法

第五七條　現狀

第五八條　現狀

第五九條　現狀

第六〇條　現狀

第六一條

（A案）行政事件ニ關ル訴訟ハ別ニ法律ノ定ムル所ニ依リ司法裁判所ノ管轄ニ屬ス

（B案）（第五七條第二項）行政事件ニ關ル訴訟ハ別ニ法律ノ定ムル所ニ依リ裁判所ノ管轄ニ屬ス

第六章　會計

第六二條　現狀

第六三條　現狀

第六四條

（第一項）現　狀

（第二項）削　除

第六五條

（第一項）現　狀

（第二項）參議院ハ衆議院ヨリ移シタル豫算ニ付增額ノ修正ヲ爲スヲトヲ得ス

第六六條　皇室內廷ノ經費ハ定額ニ依リ每年國庫ヨリ之ヲ支出シ增額ヲ要スル場合ヲ除ク外國會ノ協贊ヲ要セス

第六七條　「憲法上ノ大權ニ基ツケル既定ノ歲出及」ヲ削ル

第六八條　現　狀

第六九條

（第一項）現　狀

（第二項）豫備費ヲ以テ豫算ノ外ニ出シタル必要ノ費用ニ充ツルハ國會常置委員會ノ諮詢ヲ經ヘシ

（第三項）豫備費ヲ支出シタルトキハ後日國會ノ承諾ヲ求ムルヲ要ス

第七〇條

（第一項）公共ノ安全ヲ保持スル爲緊急ノ需用アル場合ニ於テ內外ノ情形ニ因リ政府ハ國會ヲ召集スルコト能ハサルトキハ國會常置委員會ニ諮詢シ勅令ニ依リ財政上必要ノ處分ヲ爲スコトヲ得

（第二項）　削　除

第七一條

（A案）

（第一項）豫算成立ニ至ラサルトキハ政府ハ三箇月以內ヲ限リ一箇月ニ付前年度ノ豫算ノ十二分ノ一ノ範圍內ニ於テ暫定豫算ヲ調製シ之ヲ施行スヘシ此ノ場合ニ於テハ速ニ暫定豫算ニ定ムルモノヲ除キ其ノ年度ノ豫算ヲ調製シ國會ノ協賛ヲ經ヘシ

（第二項）暫定豫算ハ之ヲ前項ノ國會ニ提出シ其ノ承諾ヲ求ムルヲ要ス

（B案）

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（第一項）會計年度開始前ニ豫算成立ニ至ラザルトキハ政府ハ會計法ノ定ムル所ニ依リ暫定豫算ヲ調製シ豫算成立ニ至ル迄之ヲ施行スベシ

（第二項）前項ノ場合ニ於テ帝國議會閉會中ナルトキハ速ニ之ヲ召集シ其ノ年度ノ豫算ヲ提出スベシ

第七二條　現事狀補　則

第七章　補　則

第七三條

（第一項）現　狀

（第二項）兩議院ノ議員ハ各々總議員三分ノ一以上ノ贊成ヲ得テ憲法改正ノ議案ヲ發議スルコトヲ得

（第三項）前二項ノ場合ニ於テ兩議院ハ各々總議員三分ノ二以上出席スルニ非サレハ議事ヲ開クコトヲ得ス出席議員三分ノ二以上ノ多數ヲ得ルニ非サレハ改正ノ議決ヲ爲スコトヲ得ス

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（第四項）天皇ハ國會ノ議決シタル憲法改正ヲ裁可シ其ノ公布ヲ命ス

第七四條	現狀
第七五條	削除
第七六條	現狀

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(B) - E 1

Tentative Revision of the Meiji Constitution
By Joji Matsumoto, 4 January, 1946 [English]

A739.1

(B) TENTATIVE REVISION OF THE CONSTITUTION

By Joji Matsumoto

GENERAL (Applicable to all Articles, including those marked "No revision.")
("Constitution of the Japanese Empire" shall read "Constitution of Japan."
"The Japanese subjects" shall read "the Japanese people," "all Japanese or Japanese," depending on context; and "Japanese subject" shall read simply "Japanese."

Chapter 1. The Emperor.

ARTICLE I:

A

The Emperor of a line unbroken through ages eternal combines in himself the rights of sovereignty, which he exercises according to the provisions of this Constitution.

Delete ARTICLE IV.

B

Japan's sovereign rights are combined in the Emperor of a line unbroken through ages eternal, who exercises them in accordance with the provisions of this Constitution.

Delete ARTICLE IV.

C

Japan shall be a monarchy headed by the Emperor of a line unbroken through ages eternal.

Add
Article __: The Emperor cobines in himself the rights of sovereignty, and he exercises them according to the provisions of this Constitution.

D

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D

Japan shall be reigned over ~~and governed~~ by the Emperor of a line unbroken through ages eternal.

Add
Article __: The Emperor exercises the rights of sovereignty according to the provisions of this Constitution.

Delete ARTICLE II.

ARTICLE III.

A

The Emperor is responsible to none in exercising the rights of sovereignty.

Add Paragraph 2:
The person of Emperor is inviolable.

B

The Emperor is the head of the State; he is inviolable.

C

The person of the Emperor is inviolable.

ARTICLE IV: (See under ARTICLE I above)

ARTICLE V: No revision

ARTICLE VI: The Emperor gives sanction to laws, and orders them to be promulgated.

ARTICLE VII: The Emperor convokes the National Diet, and orders the opening, closing and prorogation thereof.

The Emperor orders the dissolution of the House of Representatives. But he may not order it dissolved again for the one and same reason.

ARTICLE VIII:

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ARTICLE VIIX: The Emperor, in the case of an urgent necessity to maintain public safety or to avert public calamities, issues, when the National Diet is not sitting, Imperial Ordinances in the place of law by consulting the Diet Standing Committee.

Such Imperial Ordinances shall be laid before the National Diet at its next session; and when the Diet does not approve them, the government shall declare them to be invalid for the future.

ARTICLE IX: The Emperor issues, or causes to be issued, the Orders necessary for administrative purposes excepting on the matters which under this Constitution are to be determined by law. But no law may be altered by such Orders.

ARTICLE X: The Emperor appoints and dismisses officials of the government.

ARTICLE XI: Delete

ARTICIE XII: Delete

ARTICLE XIII: The Emperor conclude treaties. But the conclusion of such treaties as relate to the matters which under this Constitution are to be determined by law, or which impose serious obligations upon the State, he shall obtain the approval of the National Diet.

In the cases mentkoned in the preceding Paragraph, where there exists an urgent necessity allowing no time for convocation of the Diet, consultation with the Diet Standing Committee shall suffice. In such a case, the treaty shall be submitted for approval to the National Diet at its next session.

A treaty takes the effect of law upon its promulgation.

ARTICLE XIC:

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ARTICLE XIV: Delete

ARTICLE XV: The Emperor awards honors.

ARTICLE XVI: No revision

ARTICLE XVII: No revision

Chapter 2. Rights and Duties of the People.

ARTICLE XVIII: No revision

ARTICLE XIX: All Japanese may, according to qualifications determined in laws and ordinances, join civil service equally.

ARTICLE XX: Delete

ARTICLE XXI: No revision

ARTICLE XXII: All Japanese have the liberty of abode and of changing the same.
Such restrictions as are necessary for public interests shall be fixed by law.

ARTICLE XXIII: No revision

ARTICLE XXIV: No revision

ARTICLE XXV: The residence of all Japanese is inviolate. Such restrictions as are necessary for public interests shall be fixed by law.

ARTICLE XXVI: The secrecy of the letters of every Japanese is inviolate.
Such restrictions as are necessary for public interests shall be fixed by law.

ARTICLE XXVII: No revision

ARTICLE XXVIII:

ARTICLE XXVIII: All Japanese shall ... religious belief.

Such restrictions as are necessary for public interests shall be fixed by law.

ARTICLE XXIX: All Japanese shall enfoy the liberty of speech, writing, publication, public meetings and associations.

Such restrictions as are necessary for public interests shall be fixed by law.

ARTICLE XXX: All Japanese may present petitions according to the provisions of the law.

ARTICLE XXX-2: All Japanese have the right and the obligation to acquire education, as provided for by law.

ARTICLE XXX-3: All Japanese have the right and the obligation to work, as provided for by law.

ARTICLE XXX-4: The liberties or rights of no Japanese, other than those mentioned in the present Chapter, shall be curtailed except as provide for by law.

ARTICLE XXXI: Delete

ARTICLE XXXII: Delete

Chapter 3. The National Diet

ARTICLE XXXIII: The National Diet shall consist of two Houses, a House of Representatives and a House of Councillors.

ARTICLE XXXIV:

A

The House of Representatives shall be composed of Members elected according to the principles of universal and equal suffrage and of direct and secret voting, as provided for by law.

B

The House of Representatives shall be composed

of

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of Members publicly elected according to the provisions of the law.

ARTICLE XXXV:

A

The House of Councillors shall be composed of Members elected publicly, or appointed by the Emperor, according to occupational fields, geographical areas, and learning and experience, as provide for by law.

B

The House of Councillors shall be composed of Members elected publicly, or appointed by the Emperor, from among occupational and regional representatives and persons of learning and experience, as provided for by law.

C

The House of Councillors shall be composed of Members elected publicly, or appointed by the Emperor, as provided for by law.

ARTICLE XXXVI: No revision

ARTICLE XXXVII: No revision

ARTICLE XXXVIII: No revision

ARTICLE XXXIX: No revision

ARTICLE XXXIX-2: A Bill which has been approved in the House of Representatives three times in succession by a majority of more than two-thirds of the total members of the House, and transmitted to the House of Councillors, shall be considered as having been approved by the National Diet regardless of what action the House of Councillors may, or may not, take upon the bill.

ARTICLE XL:

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ARTICLE XL: No revision

ARTICLE XLII: A session of the National Diet shall last not less than three months. The duration shall be fixed by law. Imperial Order.
It may, if necessary, be prolonged by Imperial Order or by decision of the Diet.

ARTICLE LXIII: When urgent necessity arises, an extraordinary session may be convoked, in addition to the orginary one.
Members of both Houses may, with the concurrence of more than one-third of the total members of their respective Houses, demand convocation of the Diet.
The duration of an extraordinary session shall be fixed by Imperial Order. It may, if necessary, be prolonged by Imperial Order, or by decision of the Diet.

ARTICLE LXIV: The opening, closing, prolongation of session and prorogation of the National Diet shall be effected simultaneously for both Houses.
In case the House of Representatives has been ordered to dissolve, the House of Councillors shall at the same time be closed.

ARTICLE XLV: When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and an extraordinary session shall be convoked within three months from the day of dissolution, unless and ordinary session is convoked within the period.

ARTICLE XLVI: No revision

ARTICLE XLVII: No revision

ARTICLE XLVIII: The Deliberations of both Houses shall be held in public. But they may, by resolution of the House, be held in secret sitting.

ARTICLE XLIX:

ARTICLE XLIX: No revision

ARTICLE L: No revision

ARTICLE LI: No revision

ARTICLE LII: No revision

ARTICLE LIII: No member of either Houses, shall, during a session, be arrested without the consent of his house, except in cases of flagrant delicts, or of offences connected with a state of internal commot or with a foreign trouble. Any member, who has bee arrested prior to the session shall be set free, if so demanded by His House.

ARTICLE LIV: No revision

ARTICLE LIV-2: There shall be established in the National Diet a Standing Committee in accordance with the provisions of the Diet Law.

Chapter 4. The Ministers of State

ARTICLE LV: The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

All Laws, Imperial Ordinances and Imperial Rescripts that relates to the affairs of the State, require the counter-signature of a Minister of State. (Add a third Paragraph)

A Minister of State, on whom the House of Representatives has passed a vote of non-confidence, shall not remain in office except in the case of a dissolution of the House.

ARTICLE LV-2: The Ministers of State compose the Cabinet.

The organization of the Cabinet shall be determined by law.

ARTICLE LVI:

ARTICLE LVI: Delete

Chapter 5. The Judicature

ARTICLE LVII: No revision

ARTICLE LVIII: No revision

ARTICLE LIX: No revision

ARTICLE LX: No revision

ARTICLE LXI:

A

All suits at law relating to administrative matters shall come within the competency of the Courts, as provided for separately by law.

B

(Add a second Paragraph to Article IVII)
All suits at law relating to administrative matters shall come within the competency of the Courts, as provided for reparately by law.

Chapter 6. Finance

ARTICLE LXII: No revision

ARTICLE LXIII: No revision

ARTICLE LXV: First Paragraph: No revision
Add a second Paragraph:
No revision for an increase shall be ~~made by~~ made by the House of Councillors on a budget transmitted by the House of Representatives.

ARTICLE LXVI: The Expenditures of the Inner Court of the Imperial House shall be defrayed every year out of the National Treasury, according to a fixed amount, and shall not require the approval of the Diet, except in case an increase thereof is found necessary.

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ARTICLE LXVII: Delete the following passage:

"Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and"

ARTICLE LXVIII: No revision

ARTICLE LXIX: (First Paragraph): No revision
Add the following Paragraphs:
(Second Paragraph):
In order to apply the Reserve Fund to necessary expenditures, the maintenance of public safety, and when the National Diet cannot be convoked owing to the external or internal condition of the country, the government may, after consulting the Diet Standing Committee shall be consulted.
(Third Paragraph)
When disbursements are made from the Reserve Fund, the approval of the Diet shall be obtained later.

ARTICLE LXX: (First Paragraph)
In case there has arisen urgent need for the maintenance of public safety, and when the National Diet cannot be convoked owing to the external or internal condition of the country, the government may, after consultation with the Diet Standing Committee, take all necessary financial measures by means of an Imperial Ordinance.
(Second Paragraph): No revision

ARTICLE LXXI:

A

(First Paragraph):
When the Budget has not been brought into actual existence the government shall draw up and execute a Provisional Budget for a period not exceeding three months and within the limit of the onetwelfth of the Budget for the Preceding year per month. In this case, the government shall speedily compile the Budget for the year excepting the items provided for in the Provisional Budget, and obtain the approval thereto of the Diet.
(Second Paragraph):
The Provisional Budget mentioned in the preceding Paragraph, shall be submitted to the Diet for approval.

B.

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B

(First Paragraph)
When the Budget has not been brought into actual existence before the commancement of the fiscal year, the government shall compile a Provisional Budget, as provided for in the Account Law, and execute the same until the Budget is brought into existence.

(Second Paragraph):
In the case mentioned in the preceding Paragraph, the National Diet, if not in session, shall be speedily convoked, and the Budget for the year submitted to it.

ARTICLE LXXII: No revision

Chapter 7. Supplementary Rules

ARTICLE LXXIII: (First Paragraph): No revision

(Second Paragraph):
Members of both houses may with the concurrence of more than one-third of the total members of their respective Houses submit a project for revision of this Constitution.

(Third Paragraph):
In the cases mentioned in the preceding two Paragraphs, neither House can open the debate, unless not less than two-thirds of the whole number of members are present, and no amendment can be passed unless a majority of not less than two-thirds of members present is obtained.

(Fourth Paragraph):
The Emperor gives sanction to amendments to the Constitution and causes the same to be promulgated.

ARTICLE LXXIV: No revision

ARTICLE LXXV: No revision

ARTICLE LXXVI: No revision

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Draft Constitution of Japan 2(?)
(First Government Draft), 4 March 1946 [Japanese]

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極秘

日本國憲法

第一章　天皇

第一條　天皇ハ日本國民至高ノ總意ニ基キ日本國ノ象徴及日本國民統合ノ標章タル地位ヲ保有ス。

第二條　皇位ハ皇室典範ノ定ムル所ニ依リ世襲シテ之ヲ繼承ス。

第三條　天皇ノ國事ニ關スル一切ノ行爲ハ內閣ノ輔弼ニ依ルコトヲ要ス。內閣ハ之ニ付其ノ責ニ任ズ。

第四條　天皇ハ此ノ憲法ノ定ムル國務ニ關リ之ヲ行フ。政治ニ關スル權限ハ之ヲ有スルコトナシ。

天皇ハ法律ノ定ムル所ニ依リ其ノ權能ノ一部ヲ委任シテ行使セシムルコトヲ得。

第五條　皇室典範ノ定ムル所ニ依リ攝政ヲ置クトキハ攝政ハ天皇ノ名ニ於テ其ノ權限ヲ行フ。此ノ場合ニ於テハ前條第一項ノ規定ヲ準用ス。

昭二、三、四、（昭二三、三、二再刷）

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第六條　天皇ハ國會ノ決議ヲ經テ內閣總理大臣ヲ任命ス。

第七條　天皇ハ內閣ノ輔弼ニ依リ國民ノ爲ニ左ノ國務ヲ行フ。

一　憲法改正、法律、國令及條約ノ公布

二　國會ノ召集

三　衆議院ノ解散

四　衆議院議員ノ總選擧ヲ行フベキ旨ノ命令

五　國務大臣、大使及法律ノ定ムル所ニ依ル其ノ他ノ官吏ノ任免

六　大赦、特赦、減刑、刑ノ執行ノ停止及復權

七　榮典ノ授與

八　外國ノ大使及公使ノ引接

九　式典ノ擧行

第八條　皇室ニ對シ又ハ皇室ヨリスル財產ノ授受及收支ハ國會ノ議決ヲ經テ之ヲ爲スコトヲ要ス。

第二章　戰爭ノ廢止

第九條　戰爭ヲ國權ノ發動ト認メ武力ノ威嚇又ハ行使ヲ他國トノ間ノ爭議ノ解決ノ具トスルコトハ永久ニ之ヲ廢止ス。

陸海空軍其ノ他ノ戰力ノ保持及國ノ交戰權ハ之ヲ認メズ。

第三章　國民ノ權利及義務

第十條　國民ハ凡テノ基本的人權ノ享有ヲ妨ゲラルルコトナシ。

此ノ憲法ノ保障スル國民ノ基本的人權ハ其ノ貴重ナル由來ニ鑑ミ、永遠ニ冒ス可カラザル權利トシテ現在及將來ノ國民ニ賦與セラルベシ。

第十一條　此ノ憲法ノ保障スル自由及權利ノ享有ハ國民ノ不斷ノ監視ニ依リテ保持セラルベク、國民ハ其ノ自由及權利ノ濫用ヲ自制シ常ニ公共ノ福祉ノ爲ニ之ヲ利用スルノ義務ヲ負フ。

第十二條　凡テノ國民ハ個人トシテ尊重セラルベク、其ノ生命、自由及幸福ノ追求ニ對スル權利ハ公共ノ福祉ニ牴觸セザル限立法其ノ他諸般ノ國政ノ上ニ於テ最大ノ考慮ヲ拂ハルベシ。

第十三條　凡テノ國民ハ法律ノ下ニ平等ニシテ、人種、信條、性別、

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社會上ノ身分又ハ門閥ニ依リ政治上、經濟上又ハ社會上ノ關係ニ於テ差別セラルルコトナシ。

爵位、勳章其ノ他ノ榮典ハ特權ヲ伴フコトナシ。

第十四條　外國人ハ均シク法律ノ保護ヲ受クルノ權利ヲ有ス。

第十五條　官吏其ノ他ノ公務員ハ國家社會ノ公僕ニシテ、其ノ選任及解任ノ權能ノ根源ハ全國民ニ存ス。

第十六條　凡テノ選擧ニ於テ投票ノ祕密ハ不可侵ニシテ、選擧人ハ其ノ爲シタル被選擧人ノ選擇ニ關シ責ヲ問ハルルコトナシ。

第十七條　凡テノ國民ハ損害ノ救濟、公務員ノ罷免及法令ノ制定改廢ニ關シ請願ヲ爲スノ權利ヲ有シ、之ヲ爲シタルノ故ヲ以テ害惡ヲ加ヘラルルコトナシ。

第十八條　凡テノ國民ハ信教ノ自由ヲ有シ、禮拜、祈禱其ノ他宗教上ノ行爲ヲ强制セラルルコトナシ。

宗教團體ハ政治ニ干與シ又ハ國ヨリ特權ヲ附與セラルルコトヲ得ズ。

國及其ノ機關ハ宗教教育ノ實施其ノ他宗教ヒノ活動ヲ爲スコトヲ得ズ。

第十九條　凡テノ國民ハ其ノ思想及良心ノ自由ヲ侵サルルコトナシ。

第二十條　凡テノ國民ハ安寧秩序ヲ妨ゲザル限ニ於テ言論、著作、出版、集會及結社ノ自由ヲ有ス。

檢閲ハ法律ノ特ニ定ムル場合ノ外之ヲ行フコトヲ得ズ。

第二十一條　凡テノ國民ハ信書其ノ他ノ通信ノ秘密ヲ侵サルルコトナシ。公共ノ安寧秩序ヲ保持スル爲必要ナル處分ハ法律ノ定ムル所ニ依ル。

第二十二條　凡テノ國民ハ研學ノ自由ヲ侵サルルコトナシ。

第二十三條　凡テノ國民ハ法律ノ定ムル所ニ依リ其ノ能力ニ應ジ均シク教育ヲ受クルノ權利ヲ有ス。

凡テノ國民ハ法律ノ定ムル所ニ依リ其ノ保護スル兒童ヲシテ普通教育ヲ受ケシムルノ義務ヲ負フ。其ノ教育ハ無償トス。

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第二十四條　凡テノ國民ハ法律ノ定ムル所ニ依リ勤勞ノ權利ヲ有ス。
賃金、就業時間其ノ他勤勞條件ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

第二十五條　勤勞者ハ法律ノ定ムル所ニ依リ團結ノ權利及團體交渉其ノ他ノ集團行動ヲ爲スノ權利ヲ有ス。

第二十六條　凡テノ國民ハ公共ノ福祉ニ牴觸セザル限ニ於テ居住、移轉及生業選擇ノ自由ヲ有ス。

國民ハ外國ニ移住シ又ハ國籍ヲ離脫スルノ自由ヲ侵サルルコトナシ。

第二十七條　凡テノ國民ハ法律ノ定ムル裁判官ノ裁判ヲ受クルノ權ヲ奪ハルルコトナシ。

第二十八條　凡テノ國民ハ法律ニ依ルニ非ズシテ其ノ生命若ハ身體ノ自由ヲ奪ハレ又ハ處罰セラルルコトナシ。

殘虐ナル刑罰ハ之ヲ課スルコトヲ得ズ。

第二十九條　凡テノ國民ハ種類ノ如何ヲ問ハズ其ノ意ニ反シテ役務ニ服セシメラルルコトナク、且刑罰ノ場合ヲ除クノ外苦役ヲ强制セラ

ルルコトナシ。

兒童ノ虐使ヘ之ヲ禁止ス。

第三十條　何人ト雖モ現行犯罪ノ場合ヲ除クノ外正當ナル令狀ニ依ルニ非ズシテ逮捕セラルルコトナク、且正當ノ理由ナクシテ拘禁セラルルコトナシ。

拷問ヘ之ヲ禁止ス。

第三十一條　何人ト雖モ裁判所ノ判決確定後ニ於テ同一ノ刑事事件ニ付再ビ審理セラルルコトナシ。但シ法律ノ定ムル再審ノ場合ヘ此ノ限ニ在ラズ。

第三十二條　何人ト雖モ自白又ヘ自己ノ不利益ナル證言ヲ爲スコトヲ强制セラルルコトナシ。

自白ガ直接又ヘ間接ニ强制ヘ拷問又ヘ脅迫ノ下ニ爲サレタルトキヘ證據トシテ之ヲ認ムルコトヲ得ズ。

自白ノ外他ニ犯罪ノ證據ナキ者ニ對シテヘ有罪ノ判決ヲ爲スコトヲ

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得ズ。

第三十三條　何人ト雖モ適法ノ行爲ト付後日遡及シテ處罰セラルルコトナシ。

第三十四條　凡テノ國民ハ法律ニ依ルニ非ズシテ住所ニ侵入セラレ及捜索セラルルコトナシ。

緊急ノ場合ヲ除クノ外住所ノ侵入、捜索及押收ハ正當ナル令狀ニ基クニ非ザレバ之ヲ爲スコトヲ得ズ。

第三十五條　凡テノ國民ハ其ノ財產權ヲ侵サルルコトナシ。

財產權ノ內容及範圍ハ、公共ノ福祉ニ反セザル限度ニ於テ、法律ヲ以テ之ヲ定ム。

公共ノ福祉ノ爲必要ナル處分ハ法律ヲ以テ之ヲ定ム。但シ公正ナル補償ヲ與フルコトヲ要ス。

第三十六條　財產權ハ義務ヲ伴フ。其ノ行使ハ公共ノ福祉ノ爲ニ爲サザルベキモノトス。

第三十七條　婚姻ハ男女相互ノ合意ニ基キテノミ成立シ、且夫婦ガ同等ノ權利ヲ有スルコトヲ基本トシ相互ノ協力ニ依リ維持セラルベキモノトス。

第三十八條　凡テ國民生活ニ關スル法令ハ自由ノ保障、正義ノ昂揚竝ニ公共ノ福祉及民主主義ノ向上發展ヲ旨トシテ之ヲ定ムルコトヲ要ス。

第四章　國會

第三十九條　國會ハ國權ノ最高機關ニシテ立法權ヲ行フ。

第四十條　國會ハ衆議院及參議院ノ兩院ヲ以テ成立ス。

第四十一條　衆議院ハ選擧セラレタ議員ヲ以テ組織ス。

衆議院議員ノ員數ハ三百人乃至五百人ノ間ニ於テ法律ヲ以テ之ヲ定ム。

第四十二條　衆議院議員ノ選擧人及候補者タル資格ハ法律ヲ以テ之ヲ定ム。但シ性別、人種、信條又ハ社會上ノ身分ニ依リテ差別ヲ附ス

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ルコトヲ得ズ。

第四十三條　衆議院議員ノ任期ハ四年トス。但シ衆議院ノ解散ニ依リ其ノ滿期前ニ終了スルコトヲ妨ゲズ。

第四十四條　衆議院議員ノ選挙、選挙區及投票ノ方法ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

第四十五條　參議院ハ、地域別又ハ職能別ニ依リ選挙セラレタル議員及内閣ガ兩議院ノ議員ヨリ成ル委員會ノ決議ニ依リ任命スル議員ヲ以テ組織ス。

參議院議員ノ員數ハ二百人乃至三百人ノ間ニ於テ法律ヲ以テ之ヲ定ム。

第四十六條　參議院議員ノ任期ハ第一期ノ議員ノ半數ニ當ル者ノ任期ヲ除クノ外六年トシ、各種ノ議員ニ付三年毎ニ其ノ半數ヲ改選ス。

第四十七條　參議院議員ノ選挙又ハ任命、各種議員ノ員數及其ノ候補者タル資格ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

第四十八條　何人ト雖モ同時ニ兩議院ノ議員タルコトヲ得ズ。

第四十九條　兩議院ノ議員ハ法律ノ定ムル所ニ依リ國庫ヨリ相當額ノ歲費ヲ受ク。

第五十條　兩議院ノ議員ハ法律ノ定ムル場合ヲ除クノ外國會ノ會期中逮捕セラルルコトナシ。會期前ニ逮捕セラレタル議員ハ其ノ院ノ要求アルトキハ會期中之ヲ釋放スベシ。

第五十一條　兩議院ノ議員ハ議院ニ於テ爲シタル演說、討論又ハ表決ニ付院外ニ於テ責ヲ負フコトナシ。

第五十二條　國會ハ少クトモ毎年一回之ヲ召集ス。

第五十三條　內閣ハ臨時議會ヲ召集スルコトヲ得。各議院議員ノ總員四分ノ一以上ニ當ル者ノ要求アリタルトキハ之ヲ召集スルコトヲ要ス。

第五十四條　衆議院解散ヲ命ゼラレタルトキハ解散ノ日ヲ距ル三十日乃至四十日ノ期間內ニ衆議院議員ノ總選擧ヲ行ヒ、其ノ選擧ノ日ヨ

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リ三十日内ニ国會ヲ召集スベシ。

衆議院解散ヲ命ゼラレタルトキハ參議院ハ同時ニ閉會セラルベシ。但シ國ノ緊急ノ必要アルトキハ内閣ハ參議院ノ緊急集會ヲ求ムルコトヲ得。

第五十五條　衆議院ハ同一事由ニ基キ重ネテ之ヲ解散スルコトヲ得ズ。

第五十六條　兩議院ハ各〻其ノ議員ノ選挙、任命又ハ資格ニ關スル爭訟ヲ裁判ス。

議員タルコトヲ退セラレタル者ノ地位ヲ剥奪スル裁判ヲ爲スニハ出席議員ノ三分ノ二以上ノ多數ヲ以テ議決ヲ爲スコトヲ要ス。

第五十七條　兩議院ハ各〻其ノ總員三分ノ一以上出席スルニ非ザレバ議事ヲ開キ議決ヲ爲スコトヲ得ズ。

兩議院ノ議事ハ此ノ憲法ニ特別ノ定メタル場合ヲ除クノ外出席議員ノ過半數ヲ以テ之ヲ決ス。可否同數ナルトキハ議長ノ決スル所ニ依ル。

第五十八條　兩議院ノ議事ハ公開ス。但シ秘密會ヲ開クコトヲ得。

兩議院ハ其ノ議事ノ記錄ヲ保存シ、且之ヲ公刊シテ公衆ニ頒布スベシ。

シ。

出席議員ノ五分ノ一以上ノ要求アルトキハ議案ニ對スル各議員ノ賛否ヲ議事錄ニ記載スベシ。

第五十九條　兩議院ハ各〻議長其ノ他ノ役員ヲ選任ス。

兩議院ハ各〻其ノ會議及議事ニ關スル規則ヲ定メ、議員ニシテ紀律ヲ亂ルモノアルトキハ之ヲ處罰スルコトヲ得。但シ議員ヲ除名スルニハ出席議員三分ノ二以上ノ多數ヲ以テ議決ヲ爲スコトヲ要ス。

第六十條　凡テ法律ハ法律案ニ依ルニ非ザレバ之ヲ議決スルコトヲ得ズ。

法律案ハ兩議院ニ於テ可決セラレタルトキ法律トシテ成立ス。

衆議院ニ於テ引續キ三回可決シテ參議院ニ移シタル法律案ハ衆議院ニ於テ之ニ關スル最初ノ議事ヲ開キタル日ヨリ二年ヲ經過シタルトキハ參議院ノ議決アルト否トヲ問ハズ法律トシテ成立ス。

第六十一條　豫算ハ前ニ衆議院ニ提出スベシ。

參議院ニ於テ衆議院ト異リタル議決ヲ爲シタル場合ニ於テ、法律ノ定ムル所ニ依リ兩議院ノ協議會ヲ開クモ仍意見一致セザルトキハ衆議院ノ決議ヲ以テ國會ノ決議トス。

第六十二條　前條第二項ノ規定ハ條約、國際約定及協定ノ締結ニ要スル國會ノ協賛ニ付之ヲ準用ス。

第六十三條　兩議院ハ各〻國務ニ關スル調査ヲ爲シ、之ニ關スル證人ノ出頭、證言ノ供述及記錄ノ提出ヲ要求スルコトヲ得。此ノ場合ニ於テハ法律ノ定ムル所ニ依リ其ノ要求ニ應ゼザル者ヲ處罰スルコトヲ得。

第六十四條　內閣總理大臣及國務各大臣ハ兩議院ノ一ニ議席ヲ有スルト否トヲ問ハズ何時タリトモ法律案ニ付討論ヲ爲ス爲出席スルコトヲ得。質問又ハ質疑ニ對スル答辯ヲ要求セラレタルトキハ出席スルコトヲ要ス。

第六十五條　國會ハ罷免ノ訴追ヲ受ケタル裁判官ヲ裁判スル爲兩議院ノ

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議員ヲ以テ組織スル彈劾裁判所ヲ構成スベシ。

第六十六條　國會ハ此ノ憲法ノ規定ヲ施行スルニ必要ナル凡テノ法律ヲ制定スベシ。

第五章　內閣

第六十七條　行政權ハ內閣之ヲ行フ。

第六十八條　內閣ハ其ノ首長タル內閣總理大臣及其ノ他ノ國務大臣ヲ以テ組織ス。

內閣ハ行政權ノ行使ニ付國會ニ對シ連帶シテ其ノ責ニ任ズ。

第六十九條　內閣總理大臣ハ國會ノ決議ヲ以テ選定ス。此ノ選定ノ議事ハ他ノ凡テノ議事ニ先チ之ヲ行フベシ。

衆議院ト參議院トガ異リタル選定ヲ爲シタル場合ニ於テ、法律ノ定ムル所ニ依リ兩議院ノ協議會ヲ開クモ仍意見一致セザルトキハ衆議院ノ決議ヲ以テ國會ノ決議トス。

第七十條　內閣總理大臣ハ國會ノ協賛ヲ以テ國務大臣ヲ選定ス。此ノ協

替ニ付テハ前條第二項ノ規定ヲ準用ス。

內閣總理大臣ハ任意ニ國務大臣ノ罷免ヲ決定スルコトヲ得。

第七十一條　內閣ハ衆議院ニ於テ不信任ノ決議案ヲ可決シ又ハ信任ノ決議案ヲ否決シタルトキハ十日以內ニ衆議院ヲ解散セザル限リ總辭職ヲ爲スコトヲ要ス。

第七十二條　內閣總理大臣缺クルニ至リタルトキ又ハ衆議院議員ノ任期滿了ニ因ル總選擧ノ後ニ於テ初メテ國會ノ召集アリタルトキハ內閣ハ總辭職ヲ爲スコトヲ要ス。

第七十三條　前二條ノ場合ニ於テハ內閣ハ新ニ內閣總理大臣ノ任命セラルル迄ノ間仍其ノ職務ヲ行フベシ。

第七十四條　內閣總理大臣ハ內閣ヲ代表シテ法律案ヲ提出シ、一般國務及外交關係ノ狀況ヲ國會ニ報告シ、且行政各部ヲ監視督督ス。

第七十五條　內閣ハ他ノ一般政務ノ外特ニ左ノ事務ヲ執行ス。

一　法律ヲ誠實ニ執行シ國務ヲ掌理スルコト

Kades Papers Part A;
Item no. 2-J, P.P. 16-17

二　外交關係ヲ處理スルコト

三　條約、國際約定及協定ヲ締結スルコト但シ時宜ニ從ヒ事前又ハ事後ニ於テ國會ノ協賛ヲ得ルコトヲ要ス。

四　國會ノ定ムル規準ニ從ヒ内政事務ヲ掌理スルコト

五　豫算ヲ作成シテ國會ニ提出スルコト

六　此ノ憲法及法律ノ規定ヲ實施スル爲命令及規則ヲ制定公布スルコト但シ其ノ命令及規則ニハ刑罰規定ヲ設クルコトヲ得ズ

七　大赦、特赦、減刑、刑ノ執行停止及復權ヲ決定スルコト

第七十六條　衆議院ノ停散其ノ他ノ事由ニ因リ國會ヲ召集スルコト能ハザル場合ニ於テ公共ノ安全ヲ保持スル爲特ニ緊急ノ必要アルトキハ、内閣ハ事後ニ於テ國會ノ協賛ヲ得ルコトヲ條件トシテ法律又ハ豫算ニ代ルベキ閣令ヲ制定スルコトヲ得。

第七十七條　凡テノ法律及命令ハ主務大臣署名シ、内閣總理大臣之ニ副署スルコトヲ要ス。

第七十八條　國務大臣ハ其ノ在任中ハ内閣總理大臣ノ許諾ナクシテ訴追セラルルコトナシ。但シ之ニ因リテ訴追ノ權利ヲ害スルコトヲ得ズ。

第六章　司法

第七十九條　司法權ハ裁判所獨立シテ之ヲ行フ。

裁判所ハ最高裁判所及法律ヲ以テ定ムル其ノ他ノ下級裁判所トス。

特別裁判所ハ之ヲ設置スルコトヲ得ズ。

第八十條　最高裁判所ハ終審裁判所トス。

第八十一條　此ノ憲法第三章ノ規定ニ關聯アル法令又ハ行政行爲ガ此ノ憲法ニ違反スルヤ否ヤノ爭訟ニ付最高裁判所ノ爲シタル判決ニ對シテハ國會ハ再審ヲ爲スコトヲ得。此ノ場合ニ於テ兩議院ハ各〻其ノ總員三分ノ二以上ノ多數ヲ得ルニ非ザレバ最高裁判所ノ判決ヲ破棄スルコトヲ得ズ。

Cades Papers, Part A,
Item no. 2-J, P.P. 18-19

前項ノ再審ノ手續ハ法律ヲ以テ之ヲ定ム。

第八十二條　外國ノ大使、公使及領事ニ係ル事件ノ管轄ハ最高裁判所ニ專屬ス。

第八十三條　凡テ裁判官ハ良心ニ從ヒ獨立公平ニ其ノ職務ヲ執行スベシ。

裁判官ハ此ノ憲法及法律ニ依ルノ外其ノ職務ノ執行ニ付何等ノ干渉ヲ受クルコトナシ。

第八十四條　最高裁判所ノ裁判官ノ任命ハ之ニ次グ最初ノ衆議院議員總選擧ノ際國民ノ審査ニ付シ、爾後十年ヲ經過シタル後最初ニ行ハルル衆議院議員選擧ノ際國民ノ審査ニ付スベシ。其ノ後ニ於テ亦同ジ。

前項ノ場合ニ於テ、國民ノ多數ガ當該裁判官ノ罷免ヲ可トシタルトキハ其ノ者ハ罷免セラルベシ。

前項ノ審査ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

第八十五條　下級裁判所ノ裁判官ノ任命ハ最高裁判所ノ指名ニ係ル少クトモ倍數ノ候補者ノ中ヨリ之ヲ爲スベシ。

下級裁判所ノ判事ハ其ノ任期ヲ十年トシ、再任ヲ妨ゲズ。

第八十六條　裁判官ハ滿七十歳ニ達シタトキハ當然退官ス。

第八十七條　前三條ニ揭グル場合ノ外、裁判官ハ刑法ノ宣告、彈劾裁判所ノ判決又ハ懲戒事犯若ハ心身耗弱ヲ理由トスル裁判所ノ罷免判決ニ依ルニ非ザレバ罷免セラルルコトナシ。

彈劾ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

第八十八條　裁判官ハ法律ノ定ムル所ニ依リ相當額ノ俸給ヲ受ク。

裁判官ハ懲戒ノ處分其ノ他法律ノ條ニ定ムル事由ニ依ルノ外其ノ意ニ反シテ其ノ俸給ヲ減ゼラルルコトナシ。

第八十九條　裁判ノ對審及判決ハ之ヲ公開ス。但シ安寧秩序又ハ風俗ヲ害スルノ虞アルトキハ法律ノ定ムル所ニ依リ裁判所ノ決議ヲ以テ對審ノ公開ヲ停ムルコトヲ得。

前項但書ノ規定ハ政治ニ係ル犯罪及出版物ニ係ル犯罪其ノ他憲法第三章ノ保障スル國民ノ權利ニ係ル事件ニ付テハ之ヲ適用セズ。

Kades Papers, Part H,
Item no. 2-J, P.P. 20-21

第九十條　最高裁判所ハ此ノ憲法及法律ニ定ムルモノノ外訴訟手續ノ細目、裁判所内部ノ規律其ノ他司法事務處理ニ必要ナル諸規則ヲ定ムルコトヲ得。

下級裁判所ハ最高裁判所ノ委任ニ基キ當該裁判所ノ司法事務處理ニ必要ナル諸規則ヲ定ムルコトヲ得。

第七章　會計

第九十一條　租稅ヲ課シ又ハ現行ノ租稅ヲ變更スルハ法律ヲ以テスルコトヲ要ス。

現行ノ租稅ハ更ニ法律ヲ以テ之ヲ改メザル限ハ實ニ依リ之ヲ徵收ス。

第九十二條　國債ヲ起シ及豫算ニ定メタルモノヲ除クノ外、國庫ノ負擔ト爲ルベキ契約ヲ爲スハ國會ノ協賛ヲ經ベシ。

第九十三條　通貨ノ價値ノ決定及通貨ノ発行ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

第九十四條　國ノ歳出歳入ハ毎年豫算ヲ以テ國會ノ協賛ヲ經ベシ。

第九十五條　避クベカラザル豫算ノ不足ヲ補フ爲ニ又ハ豫算ノ外ニ生ジ

タル必要ノ費用ニ充ツル爲ニ豫備費ヲ設クベシ。

豫備費ヲ支出シタルトキハ後日國會ノ承諾ヲ求ムルコトヲ要ス。

第九十六條　皇室經費ニ關スル豫算ハ國ノ豫算ノ一部トス。世襲財産ヲ除ク皇室財産ニ付生ズル收支亦同ジ。

第九十七條　國又ハ地方公共團體ハ宗教ニ關スル團體ニ對シ金錢其ノ他ノ財産ヲ出損スルコトヲ得ズ。國ノ管理ニ屬セザル慈善、教育其ノ他之ニ類スル事業ニ對シ亦同ジ。

第九十八條　國ノ歳出歳入ノ決算ハ會計檢査院之ヲ檢査確定シ、內閣ハ其ノ檢査報告ト共ニ之ヲ國會ニ提出スベシ。

會計檢査院ノ組織及職權ハ法律ヲ以テ之ヲ定ム。

第九十九條　內閣ハ國會及國民ニ對シ少クトモ毎年一回國ノ財政ノ概要ヲ報告スベシ。

第百條　本章ニ掲グルモノノ外、國ノ會計及國有財産ニ關スル事項ハ法律ヲ以テ之ヲ定ム。

Kades Papers, Part A,
Item no. 2-J, P.P. 22-23

第八章　地方自治

第百一條　地方公共團体ノ組織及運営ニ關スル規定ハ地方自治ノ本旨ニ基キ法律ヲ以テ之ヲ定ム。

第百二條　地方公共團体ニハ法律ノ定ムル所ニ依リ其ノ議事機關トシテ議會ヲ設クベシ。

地方稅徵收權ヲ有スル地方公共團体ノ長及其ノ議會ノ議員ハ法律ノ定ムル所ニ依リ當該地方公共團体ノ住民ニ於テ之ヲ選擧スベシ。

第百三條　地方公共團体ノ住民ハ自治ノ權能ヲ有シ、法律ノ範圍内ニ於テ條例及規則ヲ制定スルコトヲ得。

第百四條　一ノ地方公共團体ニノミ適用アル特別法ハ法律ノ定ムル所ニ依リ當該地方公共團体ノ住民多數ノ承認ヲ得ルニ非ザレバ國會之ヲ制定スルコトヲ得ズ。

第九章　補則

第百五條　此ノ憲法ノ改正ハ國會之ヲ發議シ國民ニ提案シテ其ノ承認ヲ

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求ムベシ。

國會ノ発議ハ兩議院各〻其ノ總員三分ノ二以上ノ多數ヲ得ルニ非ザレバ其ノ議決ヲ爲スコトヲ得ズ。

國民ノ承認ハ法律ノ定ムル所ニ依リ國民投票ノ多數ヲ以テ之ヲ決ス。

憲法改正案ハ國民ノ承認アタルトキ憲法改正トシテ成立ス。

憲法改正ハ天皇第七條ノ規定ニ從ヒ之ヲ公布ス。

第百六條　皇室典範ノ改正ハ天皇第三條ノ規定ニ從ヒ議案ヲ國會ニ提出シ法律案ト同一ノ規定ニ依リ其ノ議決ヲ經ベシ。

前項ノ議決ヲ經タル皇室典範ノ改正ハ天皇第七條ノ規定ニ從ヒ之ヲ公布ス。

第百七條　此ノ憲法竝ニ之ニ基キ制定セラレタル法律及條約ハ國ノ最高ノ法規ニシテ、之ニ反スル法令、詔勅又ハ行政行爲ハ其ノ效ナシ。

第百八條　此ノ憲法施行ノ時ニ於テ現ニ國務大臣、國會議員、裁判官其ノ他ノ公務員タル者ハ後任者ノ選挙又ハ任命セラルル迄此ノ憲法ノ規

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定ニ拘ラズ仍従前ノ規定ニ従ヒ在任ス。

第百九條　天皇、攝政、國務大臣、國會議員、裁判官其ノ他凡ソ公務員ハ此ノ憲法ヲ尊重擁護スル義務ヲ負フ。

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Draft Constitution of Japan
(First Government Draft), 4 March, 1946 [English]

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DRAFT CONSITUTION OF JAPAN

(4 March 1946)

CHAPTER 1

THE EMPEROR

Article 1. The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law.

Article 3. The advice of theCabinet shall be required for all acts of theEmperor in matters of state, and the Cabinet shall be responsible therefore.

Article 4. The Emperor shall perform only such state functions as are provided for in this constitution. Never shall he have powers related to government.

The Emperor may delegate a part of his functions as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a regency is established, the Regent shall exercise his functions in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. TheEmperor shall appoint the Prime Minister as resolved by theDiet.

Article 7. The Emperor, with the advice of theCabinet, shall perform the following functions of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of theDiet.
Dissolution of the House ofRepresentatives.
Proclamation of general elections.
Appointment and dismissal of Ministers ofState, Ambassadors, and other officials as provided for by law.

General

General and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, and no receipts and disursements can be made thereby, without the authorization of the Diet.

CHAPTER 2
RENUNCIATION OF WAR

Article 9. War, as a sovereign right of the nation, and the threat on use of force, is forever abolished as a means of settling disputes with other nations.

The maintenance of land, sea, and air forces, as well as other war potential, and the right of belligerency of the state will not be recognized.

CHAPTER 3
RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The people shall not be prevented from enjoying any of the fundamental human rights. In view of their historical backgrounds precious to all, these fundamental human rights guaranteed to the people by this constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 11. The enjoyment of the freedoms and rights guaranteed to the people by this constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

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Article 12. All of the people shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article 13. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin. No privilege shall accompany peerage, decoration or any distinction.

Article 14. Aliens shall have equal rights to receive protection of law.

Article 15. Government officials and other public officials are public servants of the state and society, and the source of power to choose and to dismise them resides in the whole people.

Article 16. In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable for the choice of candidates he has made.

Article 17. All of the people have the right of petition for the redress of damage. For the removal of public officials and for the enactment, repeal or amendment of laws and ordinances, nor shall they be inflicted any harm for sponsoving such a petition.

Article 18. All of the people shall have the freedom of religion, nor shall they be compelled to take part in worship, prayer and other religious acts.

No religious organization shall take part in politics, nor receive any privilege from the State.

The State and its organs shall refratin from religious education or any other religious activity.

Article

Article 19. Freedom of thought and conscience are gusranteed to all of the people.

Article 20. All of the people shall have the freedom of speech, writing, press, assembly and association to the extent that they do not conflict with the public peace and order.

No censorship shall be maintained except as specifically provided for by law.

Article 21. The secrecy of letter and other means of communication is guaranteed to all of the people, provided that necessary measures to be taken for the maintenance of public peace and order, shall be provided by law.

Article 22. Academic freedom is guaranteed to all of the people.

Article 23. All of the people shall have the right to receive an equal education corresponding to his ability as provided by law. Such education shall be free.

Article 24. All of the people shall have the right to work as provided for by law.

Matters pertaining to wages, working hours and other working conditions shall be fixed by law.

Article 25. Workers shall have the right to organize and to bargain and act collectively as provided by law.

Article 26. All of the people shall have freedom to choose and change their residence and to choose their occupation to the extent that it does not interfere with the public welfare.

Freedom of all of the people to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 27. All of the people shall not be denied the right to be tried by the judges as prescribed by law.

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Article 28. All of the people shall not be deprived of life or liberty, nor shall any criminal penalty be imposed upon them, except according to law.

No cruel punishments shall be inflicted.

Article 29. All of the people shall not be held in bondage of any kind against their will, nor shall they be compelled to servitude, except as panishment for crime.

The exploitation of children shall be prohibited.

Article 30. No person shall be apprehended except upon duly issued warrant unless he is apprehended while committing a crime, nor shall he be detained without adequate cause.

The infliction of torture is forbidden.

Article 31. No person shall be reexamined for the same crime for which the judgement of court has become irrevocable except in the case of reexamination as provided by law.

Article 32. No person shall be compelled to confess or testify against himself.

No confession shall be admitted in evidence if made directly or indirectly under compulsion, torture or threat.

No person shall be convicted in cases where the only proof of crime is his own confession.

Article 33. No person shall be punished retroactively for an act which was lawful at the time it was committed.

Article 34. All of the people shall be secure in their homes against entries and searches except as provided for by law.

Except in cases of emergency, entries into homes, searches and seizures shall not be made except upon duly issued warrant.

Article 35. The right to own property is guaranteed to all of the people.

The substance and scope of property rights shall be defined by law in conformity with the public welfare.

Necessary measures to be taken for the public welfare shall be prescribed by law, provided that just compensation be made therefor.

Article 36. Property rights is accompanied by obligations. Its use shall be made for the public welfare.

Article 37. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis.

Article 38. All laws and ordinances pertaining to the national livelihood shall be designed for the guarantee of freedom, enhancement of justice and for the promotion and extension of public welfare and of democracy.

CHAPTER 4

THE DIET

Article 39. The Diet shall be the highest organ of state power, and shall exercise the legislative power.

Article 40. The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.

Article 41. The House of Pepresentatives shall consist of elected members.

The number of the members of the House of Representatives shall be fixed by law between three hundreds (300) and five hundreds (500).

Article 42. The qualifications of electors and candidates for the Houses of Representatives shall be fixed by law. However, there shall be no discrimination because of sex, race, religion, or social status.

Article 43. The term of office of members of the House of Representatives shall be 4 years. However, the term may be terminated before the full term is up, by dissolution of the House of Representatives.

Article 44. Matters pertaining to the method of election of members of the House of Representatives, electoral districts, and method of voting, shall be fixed by law.

Article

Article 45. The House ofCouncillors shall consist of members elected for the various districts or professions and members appointed by the Cabinet upon resolution of a committee consisting of members of both Houses.

The number of members of the House of Councillors shall be fixed by law between two hundreds (200) and three hundreds (300).

Article 46. The term of office of the members of the House of Councillors shall be six years, except forhalf the members serving in the first term. Election for half the members of each kind shall take place every three years.

Article 47. Matters pertaining to the election or appointment of members of the House of Councillors, the number of members of each kind and qualifications of candidates therefor shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any member arrested before the opening of the session shall be freed during the term of the session upon demand of his House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article 52. The Diet shall be convoked at least once per year.

Article 53. The Cabinet may call extraordinary sessions of the Diet. When a quarter ormore of the total members of either House makes the demand, the Diet must be called into session.

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Article 54. When the House of Representatives is ordered dissolved, there must be a general election of members of the House of Representatives during the period within thirty (30) or forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved the House of Councillors must, at the same time, be closed.

Article 55. The House of Representatives shall not be dissolved repeatedly for the same cause.

In order to pass the judgment denying a seat to anyone certified to have been elected, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 57. Business cannot be transacted in either House unless at least one-third of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article 58. Deliberation in each House shall be public. No secret meetings shall be held.

Each House shall keep a record of proceedings. This record shall be published and distributed to the public.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 59. Each House shall select its own president and other officials.

Each House shall establish its rules and regulations pertaining to meetings and proceedings, and may punish members for disorderly conduct. However, in order to expel a member, a mojority of two-thirds or more of those members present must pass a resolution thereon.

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Article 60. No law shall be passed except by bill.

A bill becomes a law on passage by both Houses.

A bill, which is passed a third time consecutively by the House of Representatives and sent to the House of Councillors, becomes a law, regardless of whether the decision of the House of Councillors is made or not, upon the lapse of two years since the day when the House of Representatives opened the business on the bill for the first time.

Article 61. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, the decision of the House of Representatives will be considered the decision of the Diet.

Article 62. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties, and international conventions and agreements.

Article 63. Each House may conduct investigations in relation to national affairs, and may compel the presence and testimony of witnesses, and the production of records. In such cases, each House can punish in accordance with law, those who do not comply with the demands.

Article 64. The Prime Minister, and the Ministers of State, may at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their answer to interpellations or questions is required.

Article 65. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Article 66. The Diet shall enact all laws necessary to carry into execution the provisions of this Constitution.

CHAPTER

CHAPTER 5
THE CABINE

Article 67. Executive power shall be vested in the Cabinet.

Article 68. The Cabinet shall consist of the Prime Minister, who shall be its head, andother Ministers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively reponsible to the Diet.

Article 69. The Prime Minister shall be designated by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both houses, provided for by law, cannot reach an agreement, the decision of the House of Represenatives shall be the decision of the Diet.

Article 70. The Prime Minister shall, with the approval of the Diet, designate the Ministers of State. The second paragraph of the preceding article shall apply to this approval.

The Prime Minister may decide on the removal of Ministers of State as he chooses.

Article 71. If the House of Representatives passes no-confidence resolution, or fails to pass a confidence resolution, the Cabinet shall resign en masse, unless it dissolves the House of Representatives within ten days.

Article 72. When there is a vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election caused by the expiration of term of members of the House of Representatives, the Cabinet shall resign en masse.

Article 73. In the cases mentioned in the preceding two articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 74. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet, and exercises supervision and control over various administrative branches.

Article 75. The Cabinet, in addition to other general administrative functions shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties, international conventions and agreements. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by the Diet, manage internal administrative affairs.

Prepare the budget, and present it to the Diet.

Enact and promulgate orders and regulations in order to carry out the provisions of this Constitution and of the law. However, it cannot include penal provisions in such orders and regulations.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 76. In cases where the Diet cannot be convoked due to the dissolution of the House of Representatives and other causes the Cabinet may, if there is a particularly urgent necessity for the maintenance of the public safety, enact a cabinet order to be substituted for law or budget on the condition that a subsequent approval of the Diet be obtained therefor.

Article 77. All laws and orders shall be signed by the competent Minister of State, and countersigned by the Prime Minister.

Article 78. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER 6
JUDICIARY

Article 79. Judicial power shall independently be exercised by the court.

The Court shall consist of a Supreme Court and such other inferior courts as provided by law.

A 86

No extraordinary tribunal shall be established.

Article 80. The Supreme Court shall be the Court of last resort.

Article 81. As for litigations on the constitutionality of law and order, or administrative act pertaining to the provisions of Chapter III of this Constitution, the trial of the Supreme Court shall be final.

The Diet may review the judgement of the Supreme Court in litigations on the constitutionality of law and order or administrative acts other than those mentioned in the preceding paragraph. In such cases the judgement of the Supreme Court shall not be reversed unless by the concurring vote of two-thirds of all the members of each House of the Diet.

The procedure of review in the preceding paragraph shall be fixed by law.

Article 82. The Supreme Court shall have the sole Jurisdiction over cases involving ambassadors, ministers and consuls of foreign states.

Article 83. All judges shall strictly and impartially execute their duty according to their conscience.

Judges shall be bound, in the exercise of their duty, only by this Constitution and laws.

Article 84. The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge, he shall be dismissed.

A 89

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

Article 85. The judges of the inferior courts shall be appointed from among candidates of at least twice the required number, who will be nominated by the Supreme Court.

The judges of the in ferior courts shall hold office for a term of ten (10) years with privilege of reappointment.

Article 86. The judges shall be retired automatically upon the attainment of the age of seventy (70) years.

Article 87. Except in case mentioned in the preceding three Articles, the judges shall not be dismissed unless by penal sentence, judgement of impeachment court or judgement of dismissal by the court as a disciplinary action or on account of mental or physical incompetency.

Matters portaining to impeachment shall be provided by law.

Article 88. The judges shall receive adequate compensation as provided by law. The compensation of judges shall not be decreased against their will unless as a disciplinary action or for other reasons as specifically provided by law.

Article 89. Trials shall be conducted and judgement declared publicly. Where, however, a court determines publicity to be dangerous to public order and morals as provided for by law, a trial may be conducted privately.

The proviso of the preceding paragraph shall not be applied to trials of political offenses, offenses involving the press, and other cases wherein the rights of people as guaranteed in Chapter 3 of this Constitution are in question.

Article 90. The Supreme Court may determine the details of procedure, the internal discipline of the courts and other rules necessary for the administration of judicial affairs except as provided by this Constitution and laws.

An inforior court may determine its rules necessary for the administration of judicial affairs as authorized by the Supreme Court.

CHAPTER

A 88

CHAPTER 7
FINANCE

Article 91. Imposition of new taxes or modification of existing ones shall be prescribed by law:

The existing taxes shall continue to be collected as heretofore unless changed or modified by law.

Article 92. No national loan shall be raised, nor shall any contract imposing a burden on the national treasury be entered into in the absence of an appropriation therefor except as authorized by the Diet.

Article 93. Matters pertaining to the determination of the value of currency and issuance thereof shall be provided by law.

Article 94. An annual budget setting forth annual expenditure and revenue of the State shall be submitted to the Diet for approval.

Article 95. In order to provide for unavoidable deficiencies in the budget or for necessary expenditures outside the appropriation of the budget a reserve fund shall be established.

Payments from the reserve fund shall be subject to a subsequent approval of the Diet.

Article 96. The budget concerning allowances and expenses of the Imperial Household shall constitute a part of the national budget. The same shall apply to the income and expenditure arising from Imperial properties other than the hereditary estates.

Article 97. Neither the State nor the local public entity shall appropriate money or other properties for religious associations. The same shall apply to appropriations for charitable, educational and other similar purposes not under the control of the State.

Article 98. A final audit of annual expenditures and revenues of the State shall be made and determined by board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be fixed by law.

Article

Article 99. At least annually the Cabinet shall report to the Diet and the people on the state of national finances.

Article 100. Matters pertaining to national finances and state property shall be prescribed by law except as provided in this Chapter.

CHAPTER 8
LOCAL SELF GOVERNMENT

Article 101. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 102. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of the local public entities having the power to levy local taxes, the members of their legislative assemblies shall be elected by inhabitants thereof.

Article 103. Inhabitants of local public entities shall have the right of self government and may enact by-laws and regulations within law.

Article 104. A special law applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER 9
SUPPLEMENTARY PROVISIONS

Article 105. Amendments to this Constitution shall be initiated by the Diet and submitted to the people for ratification.

The initiative of the Diet shall not be taken unless by a concurring vote of two-thirds of more of all the members of each House.

The ratification of the people shall be dicided by a majority of all votes cast therefor at such national referendum as law shall prescribe.

Draft amendments to this Constitution shall become final as the amendments to this Constitution upon ratification by the people.

Amendments to this Constitution shall be proclaimed by the Emperor in accordance with the provisions of Article 7 of this Constitution.

Article 106. Amendments to the Imperial House Law shall be initiated by the Emperor in accordance with the provisions of Article 3 of this Constitution by submitting to the Diet a draft which shall be decided under the same provisions as in the case of a bill.

Amendments to the Imperial House Law as passed by the Diet under the preceding paragraph shall be proclaimed by the Emperor in accordance with the provisions of Article 7 of this Constitution.

Article 107. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the state and no law or ordinance and no imperial rescript or other administrative acts contrary to the provisions thereof, shall have legal force or validity.

Article 108. The Ministers of State, members of the Diet, judges and all other public officials in office at the time of the enforcement of this Constitution, shall remain at their posts in accordance with existing provisions of law regardless of the provisions of this Constitution, until their successors are elected or appointed.

Article 109. The Emperor or the Regent, the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

A 91

J 3

Draft Constitution of Japan
(Second Government Draft), 6 March, 1946 [Japanese]

A 91.1

憲法改正草案要綱

（昭和二十一年三月六日）

内閣

A92

憲法改正草案要綱

日本國民ハ、國會ニ於ケル正當ニ選擧セラレタル代表者ヲ通ジテ行動シ、我等自身及子孫ノ爲ニ諸國民トノ平和的協力ノ成果及此ノ國全土ニ及ブ自由ノ福祉ヲ確保シ、且政府ノ行爲ニ依リ再ビ戰爭ノ慘禍ノ發生スルガ如キコトナカラシメンコトヲ決意ス。乃チ玆ニ國民至高意思ヲ宣言シ、國政ヲ以テ其ノ權威ハ之ヲ國民ニ承ケ、其ノ權力ハ國民ノ代表者之ヲ行使シ、其ノ利益ハ國民之ヲ享有スベキ崇高ナル信託ナリトスル基本的原理ニ則リ此ノ憲法ヲ制定確立シ、之ト牴觸スル一切ノ法令及詔勅ヲ廢止ス。

日本國民ハ永世ニ亙リ平和ヲ希求シ、人間關係ヲ支配スル高邁ナル理想ヲ深ク自覺シ、我等ノ安全及生存ヲ維持スル爲世界ノ平和愛好諸國民ノ公正ト信義ニ信倚センコトヲ期ス。日本國民ハ平和ヲ維持シ且專制、隷從、壓抑及偏狹ヲ永遠ニ拂拭セントスル國際社會ニ伍シテ名譽ア[illegible]地位ヲ占メンコトヲ庶幾フ。我等ハ萬國民均シク恐怖ト缺乏ヨリ解放セラレ、平和ノ裡ニ生

A94

存スル權利ヲ有スルコトヲ主張シ且承認ス。

我等ハ何レノ國モ單ニ自己ニ對シテノミ責任ヲ有スルニ非ズシテ、政治道德ノ法則ハ普遍的ナルガ故ニ、之ヲ遵奉スルコトハ自國ノ主權ヲ維持シ他國トノ對等關係ヲ主張セントスル各國ノ負フベキ義務ナリト信ズ。

日本國民ハ國家ノ名譽ヲ賭シ全力ヲ擧ゲテ此等ノ高遠ナル目的ヲ達成センコトヲ誓フ。

A95

第一　天皇

第一　天皇ハ日本國民至高ノ總意ニ基キ日本國及其ノ國民統合ノ象徴タルベキコト

第二　皇位ハ國會ノ議決ヲ經タル皇室典範ノ定ムル所ニ依リ世襲シテ之ヲ繼承スルコト

第三　天皇ノ國務ニ關スル行爲ハ凡テ內閣ノ輔弼贊同ニ依リ內閣ハ其ノ責ニ任ズルコト

第四　天皇ハ此ノ憲法ノ定ムル國務ヲ除クノ外政治ニ關スル權能ヲ有スルコトナキコト

天皇ハ法律ノ定ムル所ニ依リ其ノ權能ヲ委任スルコトヲ得ルコト

第五　皇室典範ノ定ムル所ニ依リ攝政ヲ置クトキハ攝政ハ天皇ノ名ニ於テ其ノ權能ヲ行フモノトシ其ノ場合ニ於テハ前記第四第一項ニ準ズルコト

第六　天皇ハ國會ノ指名ニ基キ內閣總理大臣ヲ任命スルコト

第七　天皇ハ內閣ノ輔弼贊同ニ依リ國民ノ爲ニ左ノ國務ヲ行フコト

一　憲法改正、法律、政令及條約ノ公布

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二　國會ノ召集

三　衆議院ノ解散

四　衆議院議員總選擧ヲ行フベキ旨ノ宣布

五　國務大臣、大使及法律ノ定ムル其ノ他ノ官吏ノ任免ノ認證

六　大赦、特赦、減刑、刑ノ執行ノ停止及復權ノ認證

七　榮典ノ授與

八　外國ノ大使及公使ノ接受

九　式典ノ擧行

第八　皇室ノ爲ス金錢其ノ他ノ財産ノ授受ハ國會ノ議決ナクシテ之ヲ爲スコトヲ得ザルコト

第二　戰爭ノ拋棄

第九　國ノ主權ノ發動トシテ行フ戰爭及武力ニ依ル威嚇又ハ武力ノ行使ヲ他國トノ間ノ紛爭

A97

ノ解決ノ具トスルコトハ永久ニ之ヲ抛棄スルコト

陸海空軍其ノ他ノ戰力ノ保持ハ之ヲ許サズ國ノ交戰權ハ之ヲ認メザルコト

第三　國民ノ權利及義務

第十　國民ハ凡テノ基本的人權ノ享有ヲ妨ゲラルルコトナキモノトシ此ノ憲法ノ保障スル國民ノ基本的人權ハ永遠ニ亙ル不可侵ノ權利トシテ現在及將來ノ國民ニ賦與セラルベキコト

第十一　此ノ憲法ノ保障スル自由及權利ハ國民ニ於テ不斷ニ之ガ保持ニ努ムルト共ニ國民ハ其ノ濫用ヲ自制シ常ニ公共ノ福祉ノ爲ニ之ヲ利用スルノ責務ヲ負フコト

第十二　凡テ國民ノ個性ハ之ヲ尊重シ其ノ生命、自由及幸福希求ニ對スル權利ニ付テハ公共ノ福祉ニ牴觸セザル限リ立法其ノ他諸般ノ國政ノ上ニ於テ最大ノ考慮ヲ拂フベキコト

第十三　凡ソ人ハ法ノ下ニ平等ニシテ人種、信條、性別、社會的地位又ハ門地ニ依リ政治的、經濟的又ハ社會的關係ニ於テ差別ヲ受クルコトナキコト

A98

將來何人ト雖モ華族タルノ故ヲ以テ國又ハ地方公共團體ニ於テ何等ノ政治的權力ヲモ有スルコトナク華族ノ地位ハ現存ノ者ノ生存中ニ限リ之ヲ認ムルコトトシ榮譽、勳章又ハ其ノ他ノ榮典ノ授與ニハ何等ノ特權ヲ伴フコトナク此等ノ榮典ノ授與ハ現ニ之ヲ有シ又ハ將來之ヲ受クル者ノ一代ニ限リ其ノ效力ヲ有スベキコト

第十四　國民ハ其ノ公務員ヲ選定及罷免スルノ權利ヲ專有スルコト公務員ハ凡テ全體ノ奉仕者ニシテ其ノ一部ノ奉仕者ニ非ザルコト

凡ソ選擧ニ於ケル投票ノ祕密ハ之ヲ侵スベカラズ選擧人ハ其ノ選擇ニ關シ公的ニモ私的ニモ責ヲ問ハルルコトナカルベキコト

第十五　何人ト雖モ損害其ノ他ニ關スル救濟、公務員ノ罷免及法律、命令又ハ規則ノ制定、廢止又ハ改正ニ關シ平穩ニ請願ヲ爲ス權利ヲ有シ何人モ斯カル請願ヲ爲シタルノ故ヲ以テ如何ナル差別待遇ヲモ受クルコトナキコト

A 99

第十六　何人ト雖モ如何ナル奴隷的役務ニモ服セシメラルルコトナク犯罪ニ因ル處罰ノ場合ヲ除クノ外其ノ意ニ反スル苦役ハ之ヲ禁ズルコト

第十七　思想及良心ノ自由ハ侵スベカラザルコト

第十八　信教ノ自由ハ何人ニ對シテモ之ヲ保障スルコトトシ如何ナル宗教團體モ國家ヨリ特權ヲ受クルコトナク且政治上ノ權力ヲ行使スルコトナカルベキコト

何人ト雖モ宗教上ノ行爲、祝典、儀式又ハ行事ニ參加スルコトヲ強制セラレザルベキコト

國及其ノ機關ハ宗教教育其ノ他如何ナル宗教的活動ヲモ爲スベカラザルコト

第十九　集會、結社及言論、出版其ノ他一切ノ表現ノ自由ハ之ヲ保障シ檢閲ハ之ヲ禁ジ通信ノ祕密ハ之ヲ侵スベカラザルコト

第二十　國民ハ凡テ公共ノ福祉ニ牴觸セザル限リ居住、移轉及職業選擇ノ自由ヲ有スルコト

國民ハ外國ニ移住シ又ハ國籍ヲ離脫スルノ自由ヲ侵サルルコトナキコト

A 100

第二十一　國民ハ凡テ研學ノ自由ヲ保障セラルルコト

第二十二　婚姻ハ兩性雙方ノ合意ニ基キテノミ成立シ且夫婦ガ同等ノ權利ヲ有スルコトヲ基本トシ相互ノ協力ニ依リ維持セラルベキコト

配偶ノ選擇、財産權、相續、住所ノ選定、離婚竝ニ婚姻及家族ニ關スル其ノ他ノ事項ニ關シ個人ノ權威及兩性ノ本質的平等ニ立脚スル法律ヲ制定スベキコト

第二十三　法律ハ有ラユル生活分野ニ於テ社會ノ福祉及安寧、公衆衞生、自由、正義竝ニ民主主義ノ向上發展ノ爲ニ立案セラルベキコト

第二十四　國民ハ凡テ法律ノ定ムル所ニ依リ其ノ能力ニ應ジ均シク教育ヲ受クルノ權利ヲ有スルコト

國民ハ凡テ其ノ保護ニ係ル兒童ヲシテ初等教育ヲ受ケシムルノ義務ヲ負フモノトシ其ノ教育ハ無償タルコト

A 101

第二十五　國民ハ凡テ勤勞ノ權利ヲ有スルコト

賃金、就業時間其ノ他ノ勤勞條件ニ關スル基準ハ法律ヲ以テ之ヲ定ムルコト

兒童ノ不當使用ハ之ヲ禁止スベキコト

第二十六　勤勞者ノ團結及團體交涉其ノ他ノ集團行爲ヲ爲スノ權利ハ之ヲ保障スベキコト

第二十七　財產權ハ侵サルルコトナキコト

財產權ノ內容ハ法律ヲ以テ之ヲ定メ公共ノ福祉ニ適應セシムルコト

私有財產ハ正當ナル補償ヲ以テ之ヲ公共ノ用ニ供セラルルコトアルベキコト

第二十八　何人ト雖モ現行犯トシテ逮捕セラルル場合ヲ除クノ外權限アル司法官憲ガ發スル令狀ニシテ訴追ノ理由タル犯罪ヲ明示スルモノニ依ルニ非ザレバ逮捕セラルルコトナキコト

第二十九　何人ト雖モ訴追ノ趣旨ヲ直チニ告ゲラルルコトナク又ハ直チニ辯護人ニ依賴スル

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第二十一　國民ハ凡テ研學ノ自由ヲ保障セラルルコト

第二十二　婚姻ハ兩性雙方ノ合意ニ基キテノミ成立シ且夫婦ガ同等ノ權利ヲ有スルコトヲ基本トシ相互ノ協力ニ依リ維持セラルベキコト

配偶ノ選擇、財産權、相續、住所ノ選定、離婚竝ニ婚姻及家族ニ關スル其ノ他ノ事項ニ關シ個人ノ權威及兩性ノ本質的平等ニ立脚スル法律ヲ制定スベキコト

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第二十四　國民ハ凡テ法律ノ定ムル所ニ依リ其ノ能力ニ應ジ均シク教育ヲ受クルノ權利ヲ有スルコト

國民ハ凡テ其ノ保護ニ係ル兒童ヲシテ初等教育ヲ受ケシムルノ義務ヲ負フモノトシ其ノ教育ハ無償タルコト

A 101

ノ權利ヲ與ヘラルルコトナクシテ逮捕又ハ拘留セラルルコトナク何人モ正當ノ理由ナクシテ拘留セラルルコトナク要求アルトキハ其ノ理由ハ直チニ本人及其ノ辯護人ノ出席スル公開ノ法廷ニ於テ之ヲ示スベキコト

第三十　何人ト雖モ國會ノ定ムル手續ニ依ルニ非ザレバ其ノ生命若ハ自由ヲ奪ハレ又ハ刑罰ヲ科セラルルコトナカルベク何人モ裁判所ニ於テ裁判ヲ受クルノ權利ヲ奪ハルルコトナカルベキコト

第三十一　國民ガ其ノ身體、家庭、書類及所持品ニ付侵入、捜索、拘禁及押收ヲ受ケザル權利ハ相當ノ理由ニ基キ且捜索スベキ場所及拘禁又ハ押收スベキ人又ハ物ヲ明示スル令狀ヲ發スルニ非ザレバ侵サルルコトナカルベキコト

捜索又ハ拘禁若ハ押收ハ權限アル司法官憲ノ發スル各別ノ令狀ニ依リ之ヲ行フベキコト

第三十二　公務員ニ依ル拷問及殘虐ナル刑罰ハ絶對ニ之ヲ禁ズベキコト

A103

第三十三　凡ソ刑事事件ニ於テハ被告人ハ公平ナル裁判所ノ迅速ナル公開裁判ヲ受クルノ權利ヲ享有スベキコト

刑事被告人ハ總テノ證人ニ對シ訊問ノ行ハルル有ラユル機會ヲ與ヘラレ且公費ヲ以テ自己ノ爲ニ證人ヲ求ムルノ強制的手續ニ付テノ權利ヲ有スベキコト

被告人ハ如何ナル場合ニ於テモ資格アル辯護人ヲ依賴シ得ベク若シ自ラ之ヲ依賴スルコト能ハザルトキハ國ニ於テ之ヲ附スルモノトスルコト

第三十四　何人ト雖モ自己ニ不利益ナル證言ヲ強要セラレザルコト

強制、拷問若ハ脅迫ノ下ニ又ハ長期ノ逮捕若ハ拘禁ノ後ニ爲シタル自白ハ之ヲ證據ト爲スヲ得ザルコト

何人ト雖モ自己ニ不利益ナル唯一ノ證據ガ本人ノ自白ナル場合ニ於テハ有罪トセラレ又ハ處罰セラルベキコトナカルベキコト

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第三十五　何人ト雖モ實行ノ時ニ於テ適法ナリシ行爲又ハ既ニ無罪トセラレタル行爲ニ因リ刑事上ノ責任ヲ問ハルルコトナカルベキモノトスルコト

第四　國會

第三十六　國會ハ國權ノ最高機關ニシテ國ノ唯一ノ立法機關トスルコト

第三十七　國會ハ衆議院及參議院ノ兩院ヲ以テ構成スルコト

第三十八　兩議院ハ國民ニ依リ選擧セラレ全國民ヲ代表スル議員ヲ以テ之ヲ組織スルコト

兩議院ノ議員ノ員數ハ法律ヲ以テ之ヲ定ムルモノトスルコト

第三十九　兩議院ノ議員及其ノ選擧人タルノ資格ハ法律ヲ以テ之ヲ定ムルコト但シ性別、人種、信條又ハ社會的地位ニ依リテ差別ヲ附スルコトヲ得ザルコト

第四十　衆議院議員ノ任期ハ四年トスルコト但シ衆議院解散ノ場合ニ於テハ其ノ期間滿了前ニ終了スルコト

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第四十一　兩議院ノ議員ノ選擧、選擧區及投票ノ方法ニ關スル事項ハ法律ヲ以テ之ヲ定ムルコト

第四十二　參議院議員ノ任期ハ第一期ノ議員ノ半數ニ當ル者ノ任期ヲ除クノ外六年トシ三年毎ニ議員ノ半數ヲ改選スルコト

第四十三　何人ト雖モ同時ニ兩議院ノ議員タルコトヲ得ザルコト

第四十四　兩議院ノ議員ハ法律ノ定ムル所ニ依リ國庫ヨリ相當額ノ歲費ヲ受クルコト

第四十五　兩議院ノ議員ハ法律ノ定ムル場合ヲ除クノ外國會ノ會期中逮捕セラルルコトナク會期前ニ逮捕セラレタル議員ハ其ノ院ノ要求アルトキハ會期中之ヲ釋放スベキコト

第四十六　兩議院ノ議員ハ議院ニ於テ爲シタル演說、討論又ハ表決ニ付院外ニ於テ責ヲ負フコトナキコト

第四十七　國會ハ少クトモ毎年一回之ヲ召集スルコト

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第四十八　内閣ハ國會ノ臨時會ノ召集ヲ決定スルコトヲ得ルモノトシ何レカノ議院ノ總議員四分ノ一以上ニ當ル者ノ要求アリタルトキハ其ノ召集ヲ決定スルコトヲ要スルコト

第四十九　衆議院解散ヲ命ゼラレタルトキハ解散ノ日ヨリ四十日以内ニ衆議院議員ノ總選擧ヲ行ヒ其ノ選擧ノ日ヨリ三十日以内ニ國會ヲ召集スベキコト

衆議院解散ヲ命ゼラレタルトキハ參議院ハ同時ニ閉會セラルベキモノトスルコト

第五十　兩議院ハ各〻其ノ議員ノ選擧又ハ資格ニ關スル爭訟ヲ裁判スルコト

當選シタルコトヲ證セラレタル者ノ議席ヲ失ハシムルニハ出席議員三分ノ二以上ノ多數ニ依ル議決ヲ爲スコトヲ要スルコト

第五十一　兩議院ハ各〻其ノ總員三分ノ一以上出席スルニ非ザレバ議事ヲ開キ議決ヲ爲スコトヲ得ザルコト

兩議院ノ議事ハ此ノ憲法ニ特例ヲ定メタル場合ヲ除クノ外出席議員ノ過半數ヲ以テ之ヲ決

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シ可否同數ナルトキハ議長ノ決スル所ニ依ルコト

第五十二　兩議院ノ議事ハ公開シ祕密會ヲ開クコトヲ得ザルコト

兩議院ハ其ノ議事ノ記錄ヲ保存シ、且之ヲ公刊シテ一般ニ頒布スベキコト

出席議員ノ五分ノ一以上ノ要求アルトキハ各議員ノ表決ハ之ヲ議事錄ニ記載スベキコト

第五十三　兩議院ハ各〻議長其ノ他ノ役員ヲ選任スルコト

兩議院ハ各〻其ノ會議及議事ニ關スル規則ヲ定メ議員ニシテ紀律ヲ紊ルモノアルトキハ之ヲ處罰スルコトヲ得ルコト但シ議員ヲ除名スルニハ出席議員三分ノ二以上ノ多數ヲ以テ議決ヲ爲スコトヲ要スルコト

第五十四　法律案ハ此ノ憲法ニ特別ノ定ヲ爲シタル場合ヲ除クノ外兩議院ニ於テ可決シタル時法律トシテ成立スルコト

衆議院ニ於テ可決シ參議院ニ於テ否決シタル法律案ハ衆議院ニ於テ出席議員三分ノ二以上

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ノ多數ヲ以テ再度可決スルトキハ法律トシテ成立スルモノトスルコト

參議院ガ衆議院ノ可決シタル法律案ヲ受領シタル後議會休會中ノ期間ヲ除キ六十日以内ニ議決ヲ爲スニ至ラザルトキハ衆議院ハ參議院ガ右法律案ヲ否決シタルモノト看做スコトヲ得ルコト

第五十五　豫算ハ前ニ衆議院ニ提出スベキコト

豫算ニ關シ參議院ニ於テ衆議院ト異リタル議決ヲ爲シタル場合ニ於テ、法律ノ定ムル所ニ依リ兩議院ノ協議會ヲ開クモ仍意見一致セザルトキハ衆議院ノ決議ヲ以テ國會ノ決議トスルコト

第五十六　條約、國際約定及協定ノ締結ニ要スル國會ノ協贊ニ付テモ亦前記第五十五第二項ニ準ズルコト

第五十七　兩議院ハ各〻國務ニ關スル調査ヲ爲シ之ニ關スル證人ノ出頭、證言ノ供述及記錄ノ

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提出ヲ要求スルコトヲ得ルモノトシ此ノ場合ニ於テハ法律ノ定ムル所ニ依リ其ノ要求ニ應ゼザル者ヲ處罰スルコトヲ得ルモノトスルコト

第五十八　內閣總理大臣及國務各大臣ハ兩議院ノ一ニ議席ヲ有スルト否トヲ問ハズ何時ニテモ法律案ニ付討論ヲ爲ス爲出席スルコトヲ得ルモノトシ答辯又ハ說明ノ爲出席ヲ求メラレタルトキハ出席スルコトヲ要スルコト

第五十九　國會ハ罷免ノ訴追ヲ受ケタル裁判官ヲ裁判スル爲兩議院ノ議員ヲ以テ組織スル彈劾裁判所ヲ設クベキモノトシ彈劾ニ關スル事項ハ法律ヲ以テ之ヲ定ムルコト

第六十　衆議院ハ此ノ憲法ノ實施ノ日ヨリ參議院ノ正式ニ成立スル迄ノ間國會トシテノ權限ヲ行フモノトスルコト

第五　內閣

第六十一　行政權ハ內閣之ヲ行フコト

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第六十二　内閣ハ其ノ首長タル内閣總理大臣及法律ヲ以テ定ムル其ノ他ノ國務大臣ヲ以テ組織スルコト

内閣ハ行政權ノ行使ニ付國會ニ對シ連帶シテ其ノ責ニ任ズルコト

第六十三　内閣總理大臣ハ國會ノ決議ヲ以テ選定スルコト此ノ選定ハ他ノ凡テノ議事ニ先チ之ヲ行フベキコト

衆議院ト參議院トガ異リタル選定ヲ爲シタル場合ニ於テ法律ノ定ムル所ニ依リ兩議院ノ協議會ヲ開クモ仍意見一致セザルトキハ衆議院ノ決議ヲ以テ國會ノ決議トスルコト

第六十四　内閣總理大臣ハ國會ノ協贊ヲ以テ國務大臣ヲ選定スルコト此ノ協贊ニ付テハ前記第六十三第二項ニ準ズルコト

内閣總理大臣ハ任意ニ國務大臣ノ罷免ヲ決定スルコトヲ得ルコト

第六十五　内閣ハ衆議院ニ於テ不信任ノ決議案ヲ可決シ又ハ信任ノ決議案ヲ可決セザルトキ

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ハ十日以内ニ衆議院ノ解散ナキ限リ總辭職ヲ爲スコトヲ要スルコト

第六十六　内閣總理大臣缺クルニ至リタルトキ又ハ衆議院議員總選擧ノ後ニ於テ初テ國會ノ召集アリタルトキハ内閣ハ總辭職ヲ爲スコトヲ要スルコト

第六十七　前記第六十五及第六十六ノ場合ニ於テハ内閣ハ新ニ内閣總理大臣ノ任命セラルル迄ノ間仍其ノ職務ヲ行フコト

第六十八　内閣總理大臣ハ内閣ヲ代表シテ法律案ヲ提出シ、一般國務及外交關係ノ狀況ヲ國會ニ報告シ竝ニ行政各部ヲ監視董督スルコト

第六十九　内閣ハ他ノ一般政務ノ外左ノ事務ヲ行フコト

一　法律ヲ誠實ニ執行シ國務ヲ掌理スルコト

二　外交關係ヲ處理スルコト

三　條約、國際約定及協定ヲ締結スルコト但シ時宜ニ依リ事前又ハ事後ニ於テ國會ノ協贊

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ヲ經ルコトヲ要スルコト

四　國會ノ定ムル規準ニ從ヒ官吏ニ關スル事務ヲ掌理スルコト

五　豫算ヲ作成シテ國會ニ提出スルコト

六　此ノ憲法及法律ノ規定ヲ實施スル爲命令及規則ヲ制定公布スルコト但シ其ノ命令及規則ニハ特ニ當該法律ノ委任アル場合ヲ除クノ外刑罰規定ヲ設クルコトヲ得ザルコト

七　大赦、特赦、減刑、刑ノ執行停止及復權ヲ決定スルコト

第七十　法律及命令ハ凡テ主務大臣署名シ內閣總理大臣之ニ副署スルコトヲ要スルコト

第七十一　國務各大臣ハ其ノ在任中ハ內閣總理大臣ノ許諾ナクシテ訴追セラルルコトナキコト但シ之ニ因リテ訴追ノ權利ヲ害スルコトヲ得ザルコト

第六　司法

第七十二　司法權ハ凡テ最高裁判所及法律ヲ以テ定ムル下級裁判所之ヲ行フコト

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特別裁判所ハ之ヲ設置スルコトヲ得ズ行政機關ハ終審トシテ裁判ヲ行フコトヲ得ザルコト

裁判官ハ凡テ其ノ良心ニ從ヒ獨立シテ其ノ職權ヲ行ヒ此ノ憲法及法律ニ依ルノ外其ノ職務ノ執行ニ付他ノ干渉ヲ受クルコトナキコト

第七十三　最高裁判所ハ訴訟手續、辯護士ニ關スル事項、裁判所ノ内部規律、司法事務處理及司法權ノ自由ナル行使ニ關スル事項ニ付規則ヲ定ムルノ權限ヲ有スルコト

檢察官ハ最高裁判所ノ定ムル規則ニ從フコトヲ要シ最高裁判所ハ下級裁判所ニ關スル規則ヲ定ムルノ權限ヲ之ニ委任スルコトヲ得ルコト

第七十四　裁判官ハ裁判ニ依リ心神ノ耗弱又ハ身體ノ故障ノ爲職務ヲ執ルコト能ハズト決定セラレタル場合ヲ除クノ外公開ノ彈劾ニ依ルニ非ザレバ罷免スルコトヲ得ズ裁判官ハ行政官廳ノ懲戒處分ヲ受クルコトナキコト

第七十五　最高裁判所ハ法律ノ定ムル員數ノ裁判官ヲ以テ之ヲ構成シ此等ノ裁判官ハ凡テ内

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閣ニ於テ之ヲ任命シ滿七十歳ニ達シタル時退官スルモノトスルコト

最高裁判所ノ裁判官ノ任命ハ其ノ任命後最初ニ行ハルル衆議院議員總選擧ノ際國民ノ審査ニ付シ爾後十年ヲ經過シタル後最初ニ行ハルル衆議院議員總選擧ノ際更ニ審査ニ付シ其ノ後ニ於テ亦同ジキコト

前項ノ場合ニ於テ投票者ノ多數ガ裁判官ノ罷免ヲ可トスルトキハ當該裁判官ハ罷免セラルベキモノトスルコト

審査ニ關スル事項ハ法律ヲ以テ之ヲ定ムルコト

此等ノ裁判官ハ凡テ定期ニ適當ノ報償ヲ受クルモノトス此ノ報償ハ在任中之ヲ減額スルコトヲ得ザルコト

第七十六　下級裁判所ノ裁判官ハ最高裁判所ノ指名シタル者ノ名簿ニ就キ内閣ニ於テ之ヲ任命シ此等ノ裁判官ハ十年ヲ以テ任期トシ再任ヲ妨ゲザルコト裁判官ハ凡テ定期ニ適當ノ報

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償ヲ受クルモノトスルコト此ノ報償ハ在任中之ヲ減額スルコトヲ得ザルコト裁判官ハ滿七十歳ニ達シタル後ハ在任スルコトヲ得ザルコト

第七十七　最高裁判所ハ最終裁判所トシ一切ノ法律、命令、規則又ハ處分ノ憲法ニ適合スルヤ否ヲ決定スルノ權限ヲ有スルコト

第七十八　裁判ノ對審及判決ハ公開法廷ニ於テ之ヲ行フベキコト但シ裁判所ガ全員一致ヲ以テ公ノ秩序又ハ善良ノ風俗ヲ害スルノ虞アリト決シタル場合ニ於テハ對審ハ公開セズシテ之ヲ行フコトヲ得ルコト政治ニ關スル犯罪、出版物ニ關スル犯罪及此ノ憲法第三ノ保障スル國民ノ權利ニ係ル事件ノ對審ハ常ニ之ヲ公開スルコトヲ要スルコト

第七　會計

第七十九　國ノ財政ヲ處理スルノ權限ノ行使ハ國會ノ議決ニ基クコトヲ要スルコト

第八十　新ニ租稅ヲ課シ又ハ現行ノ租稅ヲ變更スルハ國會ノ協贊又ハ國會ノ定ムル條件ニ依

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ルニ非ザレバ之ヲ爲スコトヲ得ザルコト

此ノ憲法施行ノ際現ニ行ハルル租稅ハ國會ガ之ヲ變更スルニ至ル迄ハ現行ノ法令ニ從ヒ之ヲ徵收スルコト

第八十一　國費ヲ支出シ又ハ國ニ於テ債務ヲ負擔スルハ國會ノ議決ニ基クニ非ザレバ之ヲ爲スコトヲ得ザルコト

第八十二　內閣ハ每會計年度ノ豫算ヲ調製シ國會ニ提出シテ其ノ審議及協贊ヲ受クベキコト

第八十三　豫見シ難キ豫算ノ不足ニ充ツル爲國會ノ協贊ヲ經テ豫備費ヲ設ケ內閣ノ責任ヲ以テ之ヲ支出スルコトヲ得ルコト

豫備費ノ支出ニ付テハ凡テ內閣ニ於テ國會ノ承諾ヲ受クルコトヲ要スルコト

第八十四　世襲財產ヲ除クノ外皇室ノ財產ハ凡テ國ニ屬ス皇室財產ヨリ生ズル收益ハ凡テ國庫ノ收入トシ法律ノ定ムル皇室經費ノ支出ハ豫算ニ由リ國會ノ協贊ヲ經ベキコト

第八十五　公金其ノ他ノ公ノ財産ハ宗教制度若ハ宗教團體ノ使用、便益若ハ維持ノ爲又ハ國ノ管理ニ屬セザル慈善、教育若ハ博愛ノ事業ニ對シ之ヲ出捐スルコトヲ得ザルコト

第八十六　國ノ收入支出ノ決算ハ凡テ每年會計檢査院之ヲ檢査シ內閣ハ次年度ニ於テ其ノ檢査報告ト共ニ之ヲ國會ニ提出スベキコト

會計檢査院ノ組織及權限ハ法律ヲ以テ之ヲ定ムベキコト

第八十七　內閣ハ國會及國民ニ對シ定期ニ且少クトモ每年一回國ノ財政狀況ニ付報告ヲ爲スベキコト

第八　地方自治

第八十八　地方公共團體ノ組織及運營ニ關スル事項ハ地方自治ノ本旨ニ基キ法律ヲ以テ之ヲ定ムベキコト

第八十九　地方公共團體ニハ法律ノ定ムル所ニ依リ其ノ議事機關トシテ議會ヲ設クベキコト

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地方公共團體ノ長、其ノ議會ノ議員及法律ノ定ムル其ノ他ノ吏員ハ當該地方公共團體ノ住民ニ於テ直接之ヲ選擧スベキコト

第九十　地方公共團體ハ其ノ財產ヲ管理シ、行政ヲ執行シ及事務ヲ處理スルノ權能ヲ有シ、且法律ノ範圍內ニ於テ條例ヲ制定スルコトヲ得ベキコト

第九十一　一ノ公共團體ニノミ適用アル特別法ハ法律ノ定ムル所ニ依リ當該地方公共團體ノ住民多數ノ承認ヲ得ルニ非ザレバ國會之ヲ制定スルコトヲ得ザルコト

第九　改正

第九十二　此ノ憲法ノ改正ハ各議院ノ總議員三分ノ二以上ノ贊成ヲ以テ國會之ヲ發議シ國民ニ提案シテ其ノ承認ヲ經ベキコトトシ國民ノ承認ハ國會ノ定ムル所ニ依リ行ハルル投票ニ於テ其ノ多數ノ贊成アルコトヲ要スルコト

憲法改正ニ付前項ノ承認ヲ經タルトキハ天皇ハ國民ノ名ニ於テ憲法ノ一部ヲ成スモノトシ

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テ直ニ之ヲ公布スベキコト

第十　最高法規

第九十三　此ノ憲法竝ニ之ニ基キテ制定セラレタル法律及條約ハ國ノ最高法規トシ、其ノ條規ニ矛盾スル法律、命令、詔勅及其ノ他ノ政府ノ行爲ノ全部又ハ一部ハ其ノ效力ヲ失フコト

第九十四　此ノ憲法ノ日本國民ニ保障スル基本的人權ハ人類ノ多年ニ亙ル自由獲得ノ努力ノ成果ニシテ、此等ノ權利ハ過去幾多ノ試錬ニ堪ヘ現在及將來ノ國民ニ對シ永劫不磨ノモノトシテ賦與セラレタルモノトスルコト

天皇又ハ攝政及國務大臣、兩議院ノ議員、裁判官其ノ他ノ公務員ハ此ノ憲法ヲ尊重擁護スルノ義務ヲ負フコト

第十一　補則

第九十五　此ノ憲法實施ノ際現ニ存スル國務大臣、兩議院ノ議員、裁判官其ノ他ノ公務員ハ此

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ノ憲法ノ條規ニ拘ラズ後任者ノ選擧又ハ任命ニ至ル迄現行法令ノ定ムル所ニ從ヒ仍其ノ任ニ留マルモノトスルコト

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Draft Constitution of Japan
(Second Government Draft), 6 March, 1946 [English]

A 123.1

DRAFT
CONSTITUTION OF JAPAN

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DRAFT CONSTITUTION OF JAPAN

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese people, pledge our national honor, determined will and full resources.

CHAPTER 1
THE EMPEROR

Article I. The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people.

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Article II. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article III. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article IV. The Emperor shall perform only such state functions as are provided for in this constitution. Never shall he have powers related to government.

The Emperor may delegate his functions as may be provided by law.

Article V. When, in accordance with the Imperial House Law, a regency is established, the Regent shall exercise his functions in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article VI. The Emperor shall appoint the Prime Minister as designated by the Diet.

Article VII. The Emperor, with the advice and approval of the Cabinet, shall perform the following functions of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general elections.

Attestation of the appointment and dismissal of Ministers of State, Ambassadors, and other officials as provided for by law.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article VIII. No property can be given to, or received by, the Imperial House, and no receipts and disbursements can be made thereby, without the authorization of the Diet.

CHAPTER 2

RENUNCIATION OF WAR

Article IX. War, as a sovereign right of the nation, and the threat or use of force, is forever renounced as a means of settling disputes with other nations.

The maintenance of land, sea, and air forces, as well as other war potential, will never be authorized.

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The right of belligerency of the state will not be recognized.

CHAPTER 3
RIGHTS AND DUTIES OF THE PEOPLE

Article X. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article XI. The enjoyment of the freedoms and rights guaranteed to the people by this constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article XII. All of the people shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article XIII. All natural persons are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin. No right of peerage shall from this time forth embody within itself any national or civic power of government, nor shall peerage extend beyond the lives of those now in being. No privilege shall accompany any award of honor, decoration or any distinction; nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of damage and other matters, for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. No person shall be held in bondage of any kind. Involuntary servitude, except as pun-

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ishment for crime, is prohibited.

Article XVII. Freedom of thought and conscience shall be held inviolable.

Article XVIII. Freedom of religion is guaranteed to all. No religious organization shall receive any privilege from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite, or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article XIX. Freedom of assembly, association, speech, and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XX. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article XXI. Academic freedom is guaranteed.

Article XXII. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIII. In all spheres of life, laws shall be designed for the promotion and extension of social welfare and security, and of public health, freedom, justice and democracy.

Article XXIV. Every person shall have the right to receive an equal education corresponding to his ability, as provided by law.

Every person shall be obligated to insure that all of the children under his protection receive elementary education. Such education shall be free.

Article XXV. All persons have the right to work. Standards for working conditions, wages and hours shall be fixed by law. The exploitation of children shall be prohibited.

Article XXVI. The right of workers to organize and to bargain and

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act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article XXVIII. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article XXIX. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; he shall not be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXX. No person shall be deprived of life or liberty, nor shall any criminal penalty be imposed, except according to procedure established by the Diet, nor shall any person be denied the right of access to the courts.

Article XXXI. The right of the people to be secure in their persons, homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and the person or things to be seized.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXII. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXIII. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government. No person shall be placed in double jeopardy for the same crime.

Article XXXIV. No person shall be compelled to testify against himself.

No confession shall be admitted

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in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXV. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted.

CHAPTER 4
THE DIET

Article XXXVI. The Diet shall be the highest organ of state power, and shall be the sole law-making authority of the State.

Article XXXVII. The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.

Article XXXVIII. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article XXXIX. The qualifications of electors and members for both Houses shall be fixed by law. However, there shall be no discrimination because of sex, race, religion, or social status.

Article XL. The term of office of members of the House of Representatives shall be 4 years. However, the term may be terminated before the full term is up, by dissolution of the House of Representatives.

Article XLI. Matters pertaining to the method of election of members of both Houses, electoral districts, and method of voting, shall be fixed by law.

Article XLII. The term of office of the members of the House of Councillors shall be six years, except for half the members serving in the first term. Election for half the members shall take place every three years.

Article XLIII. No person shall be permitted to be a member of both Houses simultaneously.

Article XLIV. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with the law.

Article XLV. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any member arrested before the opening of the session shall be freed during the term of the session upon demand of his House.

Article XLVI. Members of both Houses shall not be held liable out-

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side the House for speeches, debates, or votes cast inside the House.

Article XLVII. The Diet shall be convoked at least once per year.

Article XLVIII. The Cabinet may call extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Diet must be called into session.

Article XLIX. When the House of Representatives is ordered dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved, the House of Councillors must, at the same time, be closed.

Article L. Each House shall judge disputes related to qualifications and elections of its members.

In order to deny a seat to anyone certified to have been elected, it is necessary to pass a resolution by a majority of two-thirds of more of the members present.

Article LI. Business cannot be transacted in either House unless at least one-third of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article LII. Deliberation in each House shall be public. No secret meetings shall be held.

Each House shall keep a record of proceedings. This record shall be published and distributed to the public.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article LIII. Each House shall select its own president and other officials.

Each House shall establish its rules and regulations pertaining to meetings and proceedings, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article LIV. A bill becomes a law on passage by both Houses, except as otherwise provided by this Constitution.

A bill which is passed by the House of Representatives, and re-

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jected by the House of Councillors, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection.

Article LV. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, the decision of the House of Representatives will be considered the decision of the Diet.

Article LVI. The second paragraph of the preceding article applies also to Diet approval required for the conclusion of treaties, and international conventions and agreements.

Article LVII. Each House may conduct investigations in relation to national affairs, and may compel the presence and testimony of witnesses, and the production of records. In such cases, each House can punish, in accordance with law, those who do not comply with the demands.

Article LVIII. The Prime Minister, and the Ministers of State, may at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article LVIX. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

Article LX. The House of Representatives shall sit as the National Diet immediately upon the effective date of this Constitution and until such time as the House of Councillors shall regularly be constituted.

CHAPTER 5
THE CABINET

Article LXI. Executive power shall be vested in the Cabinet.

Article LXII. The Cabinet shall consist of the Prime Minister, who

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shall be its head, and other Ministers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article LXIII. The Prime Minister shall be designated by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both houses, provided for by law, cannot reach an agreement, the decision of the House of Representatives shall be the decision of the Diet.

Article LXIV. The Prime Minister shall, with the approval of the Diet, designate the Ministers of State. The second paragraph of the preceding article shall apply to this approval.

The Prime Minister may decide on the removal of Ministers of State as he chooses.

Article LXV. If the House of Representatives passes a no-confidence resolution, or fails to pass a confidence resolution, the Cabinet shall resign en masse, unless it dissolves the House of Representatives within ten days.

Article LXVI. When there is a vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election, the Cabinet shall resign en masse.

Article LXVII. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article LXVIII. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet, and exercises supervision and control over various administrative branches.

Article LXIX. The Cabinet, in addition to other general administrative functions shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties, international conventions and agreements. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by the Diet, administer the civil service.

Prepare the budget, and present it to the Diet.

Enact and promulgate orders and

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regulations in order to carry out the provisions of this Constitution and of the law. However, it cannot include penal provisions in such orders and regulations unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article LXX. All laws and orders shall be signed by the competent Minister of State, and countersigned by the Prime Minister.

Article LXXI. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER 6
JUDICIARY

Article LXXII. The whole judicial power is vested in a Supreme Court and in such inferior courts as the Diet shall establish.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXXIII. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts, the administration of judicial affairs, and such other matters as may properly affect the free exercise of the judicial power.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXXIV. Removals of judges shall be accomplished by public impeachment only unless judicially declared mentally or physically incompetent. No disciplinary action shall be administered by any executive organ or agency.

Article LXXV. The Supreme Court shall consist of such number of judges as may be determined by law; all such judges shall be appointed by the Cabinet and shall be retired upon the attainment of the age of 70 years.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House

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of Representatives after a lapse of ten years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

All such judges shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVI. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten years with privilege of reappointment and shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office. No judge shall hold office after attaining the age of 70 years.

Article LXXVII. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article LXXVIII. Trials shall be conducted and judgment declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press, and cases wherein the rights of people as reserved in Chapter 3 of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER 7
FINANCE

Article LXXIX. The power to administer national finances shall be exercised as the Diet shall determine.

Article LXXX. No new taxes shall be imposed or existing ones modified except by action of the Diet or under such conditions as the Diet may prescribe.

All taxes in effect at the time this Constitution is promulgated shall continue to be collected under existing regulations until changed or modified by the Diet.

Article LXXXI. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article LXXXII. The Cabinet shall prepare and submit to the Diet for

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its consideration and decision an annual budget for each fiscal year.

Article LXXXIII. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized to be expended upon the responsibility of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXIV. All property of the Imperial Household, other than the hereditary estates, shall belong to the State. The income from all Imperial properties shall be paid into the national treasury. and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXV. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of the State.

Article LXXXVI. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be determined by the Diet.

Article LXXXVII. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER 8
LOCAL SELF GOVERNMENT

Article LXXXVIII. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article LXXXIX. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their legislative assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article XC. Local public entities shall have the right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article XCI. A special law, appli-

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cable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER 9
AMENDMENTS

Article XCII. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority or all votes cast thereon at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor in the name of the People, as an integral part of this Constitution.

CHAPTER 10
SUPREME LAW

Article XCIII. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the state and no public law or ordinance and no imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Article XCIV. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

The Emperor or the Regent, the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER 11
SUPPLEMENTARY PROVISIONS

Article XCV. The Ministers of State, members of the Diet, judges and all other public officials in office at the time of the enactment of this Constitution, shall remain at their posts in accordance with existing provisions of law regardless of the provisions of this Constitution, until their successors are elected or appointed.

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Final Draft of Japanese Constitution
(Third Government Draft), submitted to
Privy Council and published on 17 April, 1946 [Japanese]

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憲法改正草案

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日本國憲法

日本國民は、國會における正當に選擧された代表者を通じて、我ら自身と子孫のために、諸國民との間に平和的協力を成立させ、日本國全土にわたつて自由の福祉を確保し、政府の行爲によつて再び戰爭の慘禍が發生しないやうにすることを決意し、こゝに國民の總意が至高なものであることを宣言し、この憲法を確定する。そもそも國政は、國民の崇高な信託によるものであり、その權威は國民に由來し、その權力は國民の代表者がこれを行ひ、その利益は國民がこれを受けるものであつて、これは人類普遍の原理であり、この憲法は、この原理に基くものである。我らは、この憲法に反する一切の法令と詔勅を廢止する。

日本國民は、常に平和を念願し、人間相互の關係を支配する高遠な理想を深く自覺するものであつて、我らの安全と生存をあげて、平和を愛する世界の諸國民の公正と信義に委ねようと決意した。我らは、平和を維持し、專制と隷從と壓迫と偏狹を地上から永遠に拂拭しようと努

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めてゐる國際社會に伍して、名譽ある地位を占めたいものと思ふ。我らは、すべての國の國民がひとしく恐怖と缺乏から解放され、平和のうちに生存する權利を有することを確認する。

我らは、いづれの國家も、自國のことのみに專念して他國を無視してはならぬのであつて、政治道德の法則は、普遍的なものであると信ずる。この法則に從ふことは、自國の主權を維持し、他國と對等關係に立たうとする各國の責務であると信ずる。

日本國民は、國家の名譽に懸け、全力をあげてこの高遠な主義と目的を達成することを誓ふ。

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第一章　天皇

第一條　天皇は、日本國の象徴であり日本國民統合の象徴であつて、この地位は、日本國民の至高の總意に基く。

第二條　皇位は、世襲のものであつて、國會の議決した皇室典範の定めるところにより、これを繼承する。

第三條　天皇の國務に關するすべての行爲には、內閣の補佐と同意を必要とし、內閣がその責任を負ふ。

第四條　天皇は、この憲法の定める國務のみを行ひ、政治に關する權能を有しない。

天皇は、法律の定めるところにより、その權能を委任することができる。

第五條　皇室典範の定めるところにより攝政を置くときは、攝政は、天皇の名でその權能を行ふ。この場合には前條第一項の規定を準用する。

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第六條　天皇は、國會の指名に基いて、内閣總理大臣を任命する。

第七條　天皇は、内閣の補佐と同意により、國民のために、左の國務を行ふ。

一　憲法改正、法律、政令及び條約を公布すること。

二　國會を召集すること。

三　衆議院を解散すること。

四　國會議員の總選擧の施行を公示すること。

五　國務大臣及び法律の定めるその他の官吏の任免竝びに全權委任狀及び大使及び公使の信任狀を認證すること。

六　大赦、特赦、減刑、刑の執行の免除及び復權を認證すること。

七　榮典を授與すること。

八　批准書及び法律の定めるその他の外交文書を認證すること。

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九　外國の大使及び公使を接受すること。

十　儀式を行ふこと。

第八條　皇室に財産を讓り渡し、又は皇室が、財産を讓り受け、若しくは賜與することは、國會の議決に基かなければならない。

第二章　戰爭の拋棄

第九條　國の主權の發動たる戰爭と、武力による威嚇又は武力の行使は、他國との間の紛爭の解決の手段としては、永久にこれを拋棄する。

陸海空軍その他の戰力の保持は、許されない。國の交戰權は、認められない。

第三章　國民の權利及び義務

第十條　國民は、すべての基本的人權の享有を妨げられない。この憲法が國民に保障する基本的人權は、侵すことのできない永久の權利として、現在及び將來の國民に與へられる。

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第十一條　この憲法が國民に保障する自由及び權利は、國民の不斷の努力によつて、これを保持しなければならない。又、國民は、これを濫用してはならぬのであつて、常に公共の福祉のためにこれを利用する責任を負ふ。

第十二條　すべて國民は、個人として尊重される。生命、自由及び幸福追求に對する國民の權利については、公共の福祉に反しない限り、立法その他の國政の上で、最大の尊重を必要とする。

第十三條　すべて國民は、法の下に平等であつて、人種、信條、性別、社會的身分又は門地により、政治的、經濟的又は社會的關係において、差別を受けない。

華族その他の貴族の制度は、これを認めない。

榮譽、勳章その他の榮典の授與は、いかなる特權も伴はない。榮典の授與は、現にこれを有し、又は將來これを受ける者の一代に限り、その效力を有する。

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第十四條　公務員を選定し、及びこれを罷免することは、國民固有の權利である。

すべて公務員は、全體の奉仕者であつて、一部の奉仕者ではない。

すべて選擧における投票の秘密は、これを侵してはならない。選擧人は、その選擇に關し公的にも私的にも責任を問はれない。

第十五條　何人も、損害その他に關する救濟、公務員の罷免及び法律、命令又は規則の制定、廢止又は改正に關し、平穩に請願する權利を有し、何人も、かかる請願をしたためにいかなる差別待遇も受けない。

第十六條　何人も、いかなる奴隷的拘束も受けない。又、犯罪に因る處罰の場合を除いては、その意に反する苦役に服させられない。

第十七條　思想及び良心の自由は、これを侵してはならない。

第十八條　信教の自由は、何人に對してもこれを保障する。いかなる宗教團體も、國から特權

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を受け、又は政治上の權力を行使してはならない。

何人も、宗教上の行爲、祝典、儀式又は行事に參加することを強制されない。

國及びその機關は、宗教教育その他いかなる宗教的活動もしてはならない。

第十九條　集會、結社及び言論、出版その他一切の表現の自由は、これを保障する。

檢閲は、これをしてはならない。通信の祕密は、これを侵してはならない。

第二十條　何人も、公共の福祉に反しない限り、居住、移轉及び職業選擇の自由を有する。

何人も、外國に移住し、又は國籍を離脫する自由を侵されない。

第二十一條　學問の自由は、これを保障する。

第二十二條　婚姻は、兩性の合意に基いてのみ成立し、夫婦が同等の權利を有することを基本として、相互の協力により、維持されなければならない。

配偶者の選擇、財產權、相續、住居の選定、離婚並びに婚姻及び家族に關するその他の事項

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に關しては、法律は、個人の權威と兩性の本質的平等に立脚して、制定されなければならない。

第二十三條　法律は、すべての生活分野について、社會の福祉及び安寧竝びに公衆衞生の向上及び增進のために立案されなければならない。

第二十四條　すべて國民は、法律の定めるところにより、その能力に應じて、ひとしく教育を受ける權利を有する。

すべて國民は、その保護する兒童に初等教育を受けさせる義務を負ふ。初等教育は、これを無償とする。

第二十五條　すべて國民は、勤勞の權利を有する。

賃金、就業時間その他の勤勞條件に關する基準は、法律でこれを定める。

兒童は、これを酷使してはならない。

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第二十六條　勤勞者の團結する權利及び團體交涉その他の團體行動をする權利は、これを保障する。

第二十七條　財產權は、これを侵してはならない。

財產權の內容は、公共の福祉に適合するやうに、法律でこれを定める。

私有財產は、正當な補償の下に、これを公共のために用ひることができる。

第二十八條　何人も、法律の定める手續によらなければ、その生命若しくは自由を奪はれ、又はその他の刑罰を科せられない。

第二十九條　何人も、裁判所において裁判を受ける權利を奪はれない。

第三十條　何人も、現行犯として逮捕される場合を除いては、權限を有する司法官憲が發し、且つ理由となつてゐる犯罪を明示する令狀によらなければ、逮捕されない。

第三十一條　何人も、理由を直ちに告げられず、又は直ちに辯護人に依頼する權利を與へられ

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なければ、抑留又は拘禁されない。又、何人も、正當な理由がなければ、拘禁されず、要求があれば、その理由は、直ちに本人及びその辯護人の出席する公開の法廷で示されなければならない。

第三十二條　國民が、その住居、書類及び所持品について、侵入、捜索及び押收を受けることのない權利は、第三十條の場合を除いては、正當な理由に基いて發せられ、且つ捜索する場所及び押收する物を明示する令狀がなければ、侵されない。

捜索又は押收は、權限を有する司法官憲が發する各別の令狀により、これを行ふ。

第三十三條　公務員による拷問及び殘虐な刑罰は、絶對にこれを禁ずる。

第三十四條　すべて刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける權利を有する。

刑事被告人は、すべての證人に對して、審問する機會を充分に與へられ、又、公費で自己の

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ために強制的手續により證人を求める權利を有する。

刑事被告人は、いかなる場合にも、資格を有する辯護人を依頼することができる。被告人が自らこれを依頼することができないときは、國でこれを附する。

第三十五條　何人も、自己に不利益な供述を強要されない。

強制、拷問若しくは脅迫の下での自白又は不當に長く抑留若しくは拘禁された後の自白は、これを證據とすることができない。

何人も、自己に不利益な唯一の證據が本人の自白である場合には、有罪とされ、又は刑罰を科せられない。

第三十六條　何人も、實行の時に適法であつた行爲又は既に無罪とされた行爲については、刑事上の責任を問はれない。又同一の犯罪について、重ねて刑事上の責任を問はれない。

第四章　國會

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第三十七條　國會は、國權の最高機關であつて、國の唯一の立法機關である。

第三十八條　國會は、衆議院及び參議院の兩議院でこれを構成する。

第三十九條　兩議院は、全國民を代表する選擧された議員でこれを組織する。

兩議院の議員の定數は、法律でこれを定める。

第四十條　兩議院の議員及びその選擧人の資格は、法律でこれを定める。但し、人種、信條、性別、社會的身分又は門地によつて差別してはならない。

第四十一條　衆議院議員の任期は、四年とする。但し、衆議院解散の場合には、その期間滿了前に終了する。

第四十二條　參議院議員の任期は、六年とし、三年ごとに議員の半數を改選する。

第四十三條　選擧區、投票の方法その他兩議院の議員の選擧に關する事項は、法律でこれを定める。

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第四十四條　何人も、同時に兩議院の議員たることはできない。

第四十五條　兩議院の議員は、法律の定めるところにより、國庫から相當額の歲費を受ける。

第四十六條　兩議院の議員は、法律の定める場合を除いては、國會の會期中逮捕されず、會期前に逮捕された議員は、その議院の要求があれば、會期中これを釋放しなければならない。

第四十七條　兩議院の議員は、議院で行つた演說、討論又は表決について、院外で責任を問はれない。

第四十八條　國會の常會は、毎年一回これを召集する。

第四十九條　内閣は、國會の臨時會の召集を決定することができる。いづれかの議院の總議員の四分の一以上の要求があれば、内閣は、その召集を決定しなければならない。

第五十條　衆議院が解散されたときは、解散の日から四十日以内に、衆議院議員の總選擧を行ひ、その選擧の日から三十日以内に、國會を召集しなければならない。

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衆議院が解散されたときは、參議院は、同時に閉會となる。但し、內閣は、國に緊急の必要があるときは、參議院の緊急集會を求めることができる。

前項但書の緊急集會において採られた措置は、臨時のものであつて、次の國會開會の後十日以內に、衆議院の同意がない場合には、その效力を失ふ。

第五十一條　兩議院は、各、その議員の選擧又は資格に關する爭訟を裁判する。但し、議員の議席を失はせるには、出席議員の三分の二以上の多數による議決を必要とする。

第五十二條　兩議院は、各、その總議員の三分の一以上の出席がなければ、議事を開き議決することができない。

兩議院の議事は、この憲法に特別の定のある場合を除いては、出席議員の過半數でこれを決し、可否同數のときは、議長の決するところによる。

第五十三條　兩議院の會議は、公開とする。但し、出席議員の三分の二以上の多數で議決した

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ときは、祕密會を開くことができる。

兩議院は、その會議の記錄を保存し、祕密會の記錄の中で特に祕密を要すると認められるもの以外は、これを公表し、且つ一般に頒布しなければならない。

出席議員の五分の一以上の要求があれば、各議員の表決は、これを會議錄に記載しなければならない。

第五十四條　兩議院は、各、議長その他の役員を選任する。

兩議院は、各、その會議その他の手續及び內部の規律に關する規則を定め、院內の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多數による議決を必要とする。

第五十五條　法律案は、この憲法に特別の定のある場合を除いては、兩議院で可決したとき法律となる。

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衆議院で可決し、參議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多數で再び可決したときは、法律となる。

參議院が、衆議院の可決した法律案を受け取つた後、國會休會中の期間を除いて六十日以内に議決しないときは、衆議院は、參議院がその法律案を否決したものとみなすことができる。

第五十六條　豫算はさきに衆議院に提出しなければならない。

豫算について、參議院で衆議院と異なつた議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は參議院が、衆議院の可決した豫算を受け取つた後、國會休會中の期間を除いて四十日以内に、議決しないときは、衆議院の議決を國會の議決とする。

第五十七條　條約の締結に必要な國會の同意については、前條第二項の規定を準用する。

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第五十八條　兩議院は、各、國務に關する調査を行ひ、これに關する證人の出頭、證言の供述及び記錄の提出を要求することができる。

第五十九條　內閣總理大臣その他の國務大臣は、兩議院の一に議席を有すると有しないとにかかはらず、何時でも議案について發言するため議院に出席することができる。又、答辯又は說明のため出席を求められたときは、出席しなければならない。

第六十條　國會は、罷免の訴追を受けた裁判官を裁判するため、兩議院の議員で組織する彈劾裁判所を設ける。

彈劾に關する事項は、法律でこれを定める。

第五章　內閣

第六十一條　行政權は、內閣がこれを行ふ。

第六十二條　內閣は、法律の定めるところにより、その首長たる內閣總理大臣及びその他の國

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務大臣でこれを組織する。

内閣は、行政權の行使について、國會に對し連帶して責任を負ふ。

第六十三條　内閣總理大臣は、國會の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。

衆議院と參議院とが異なつた指名の議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は衆議院が指名の議決をした後、國會休會中の期間を除いて二十日以内に、參議院が、指名の議決をしないときは、衆議院の議決を國會の議決とする。

第六十四條　内閣總理大臣は、國會の同意により、國務大臣を任命する。この同意については、前條第二項の規定を準用する。

内閣總理大臣は、任意に國務大臣を罷免することができる。

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第六十五條　内閣は、衆議院で不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、總辭職をしなければならない。

第六十六條　内閣總理大臣が缺けたとき、又は衆議院議員總選擧の後に初めて國會の召集があつたときは、内閣は、總辭職をしなければならない。

第六十七條　前二條の場合には、内閣は、あらたに内閣總理大臣が任命されるまで引き續きその職務を行ふ。

第六十八條　内閣總理大臣は、内閣を代表して議案を國會に提出し、一般國務及び外交關係について國會に報告し、並びに行政各部を指揮監督する。

第六十九條　内閣は、他の一般行政事務の外、左の事務を行ふ。

一　法律を誠實に執行し、國務を總理すること。

二　外交關係を處理すること。

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三　條約を締結すること。但し、事前に、時宜によつては事後に、國會の同意を經ることを必要とする。

四　法律の定める規準に從ひ、官吏に關する事務を掌理すること。

五　豫算を作成して國會に提出すること。

六　この憲法及び法律の規定を實施するために、政令を制定すること。但し、政令には、特にその法律の委任がある場合を除いては、罰則を設けることができない。

七　大赦、特赦、減刑、刑の執行の免除及び復權を決定すること。

第七十條　法律及び政令には、すべて主任の國務大臣が署名し、內閣總理大臣が連署することを必要とする。

第七十一條　國務大臣は、その在任中、內閣總理大臣の同意がなければ、訴追されない。但し、これがため、訴追の權利は、害されない。

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第六章　司法

第七十一條　司法權は、すべて最高裁判所及び法律の定めるところにより設置する下級裁判所が、これを行ふ。

特別裁判所は、これを設置することができない。行政機關は、終審として裁判を行ふことができない。

すべて裁判官は、その良心に從ひ獨立してその職權を行ひ、この憲法及び法律にのみ拘束される。

第七十三條　最高裁判所は、訴訟に關する手續、辯護士、裁判所の内部規律及び司法事務處理に關する事項について、規則を定める權能を有する。

檢察官は、最高裁判所の定める規則に從はなければならない。

最高裁判所は、下級裁判所に關する規則を定める權限を、下級裁判所に委任することがで

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きる。

第七十四條　裁判官は、裁判により、心身の故障のために職務を執ることができないと決定された場合を除いては、公の彈劾によらなければ罷免されない。裁判官の懲戒處分は、行政機關がこれを行ふことはできない。

第七十五條　最高裁判所は、法律の定める員數の裁判官でこれを構成し、その裁判官は、すべて內閣でこれを任命し、法律の定める年齡に達した時に退官する。

最高裁判所の裁判官の任命は、その任命後初めて行はれる衆議院議員總選擧の際國民の審査に付し、その後十年を經過した後初めて行はれる衆議院議員總選擧の際更に審査に付し、その後も同樣とする。

前項の場合において、投票者の多數が裁判官の罷免を可とするときは、その裁判官は、罷免される。

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審査に關する事項は、法律でこれを定める。

最高裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第七十六條　下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣でこれを任命する。その裁判官は、任期を十年とし、再任されることができる。但し、法律の定める年齢に達した時には退官する。

下級裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第七十七條　最高裁判所は、終審裁判所である。

最高裁判所は、一切の法律、命令、規則又は處分が憲法に適合するかしないかを決定する權限を有する。

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第七十八條　裁判の對審及び判決は、公開法廷でこれを行ふ。

裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害する虞があると決した場合には、對審は、公開しないでこれを行ふことができる。但し、政治に關する犯罪、出版物に關する犯罪又はこの憲法第三章で保障する國民の權利が問題となつてゐる事件の對審は、常にこれを公開しなければならない。

第七章　財政

第七十九條　國の財政を處理する權限は、國會の議決に基いて、これを行使しなければならない。

第八十條　あらたに租稅を課し、又は現行の租稅を變更するには、法律又は法律の定める條件によることを必要とする。

第八十一條　國費を支出し、又は國が債務を負擔するには、國會の議決に基くことを必要とす

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る。

第八十二條　內閣は、每會計年度の豫算を作成し、國會に提出して、その審議を受け議決を經なければならない。

第八十三條　豫見し難い豫算の不足に充てるため、國會の議決に基いて豫備費を設け、內閣の責任でこれを支出することができる。

すべて豫備費の支出については、內閣は、事後に國會の同意を得なければならない。

第八十四條　世襲財產以外の皇室の財產は、すべて國に屬する。皇室財產から生ずる收益は、すべて國庫の收入とし、法律の定める皇室の經費は、豫算に計上して國會の同意を得なければならない。

第八十五條　公金その他の公の財產は、宗教上の組織若しくは團體の使用、便益若しくは維持のため、又は公の支配に屬しない慈善、教育若しくは博愛の事業に對し、これを支出し、又は

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その利用に供してはならない。

第八十六條　國の收入支出の決算は、すべて毎年會計檢査院がこれを檢査し、內閣は次の年度に、その檢査報告とともに、これを國會に提出しなければならない。

會計檢査院の組織及び權限は、法律でこれを定める。

第八十七條　內閣は、國會及び國民に對し、定期に、少くとも毎年一回、國の財政狀況について報告しなければならない。

第八章　地方自治

第八十八條　地方公共團體の組織及び運營に關する事項は、地方自治の本旨に基いて、法律でこれを定める。

第八十九條　地方公共團體には、法律の定めるところにより、その議事機關として議會を設置する。

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地方公共團體の長、その議會の議員及び法律の定めるその他の吏員は、その地方公共團體の住民が、直接これを選擧する。

第九十條　地方公共團體は、その財産を管理し、事務を處理し、及び行政を執行する權能を有し、法律の範圍内で條例を制定することができる。

第九十一條　一の地方公共團體のみに適用される特別法は、法律の定めるところにより、その地方公共團體の住民の投票においてその過半數の同意を得なければ、國會は、これを制定することができない。

第九章　改正

第九十二條　この憲法の改正は、各議院の總議員の三分の二以上の贊成で、國會が、これを發議し、國民に提案してその承認を經なければならない。この承認には、特別の國民投票又は國會の定める選擧の際行はれる投票において、その過半數の贊成を必要とする。

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憲法改正について前項の承認を經たときは、天皇は、國民の名で、この憲法と一體を成すものとして、直ちにこれを公布する。

第十章　最高法規

第九十三條　この憲法が日本國民に保障する基本的人權は、人類の多年にわたる自由獲得の努力の成果であつて、これらの權利は、過去幾多の試錬に堪へ、現在及び將來の國民に對し、侵すことのできない永久の權利として信託されたものである。

第九十四條　この憲法並びにこれに基いて制定された法律及び條約は、國の最高法規とし、その條規に反する法律、命令、詔勅及び國務に關するその他の行爲の全部又は一部は、その效力を有しない。

第九十五條　天皇又は攝政及び國務大臣、國會議員、裁判官その他の公務員は、この憲法を尊重し擁護する義務を負ふ。

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第十一章　補則

第九十六條　この憲法は、公布の日から起算して六箇月を經過した日から、これを施行する。

この憲法を施行するために必要な法律の制定、參議院議員の選擧及び國會召集の手續竝びにこの憲法を施行するために必要な準備手續は、前項の期日よりも前に、これを行ふことができる。

第九十七條　この憲法施行の際現に華族その他の貴族の地位にある者については、その地位は、その生存中に限り、これを認める。但し、將來、華族その他の貴族たることにより、いかなる政治的權力も有しない。

第九十八條　この憲法施行の際、參議院がまだ成立してゐないときは、その成立するまでの間、衆議院は、國會としての權限を行ふ。

第九十九條　この憲法による第一期の參議院議員のうち、その半數の者の任期は、これを三年

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とする。その議員は、法律の定めるところにより、これを定める。

第百條　この憲法施行の際現に在職する國務大臣、衆議院議員及び裁判官並びにその他の公務員で、その地位に相應する地位がこの憲法で認められてゐる者は、法律で特別の定をした場合を除いては、この憲法施行のため、當然にはその地位を失ふことはない。但し、この憲法によつて、後任者が選擧又は任命されたときは、當然その地位を失ふ。

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"Final" Draft of Japanese Constitution
(Third Government Draft) submitted to
Privy Council and published on 17 April, 1946 [English]

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Final Draft

of

Japanese Constitution

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Final Draft of Japanese Constitution

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, law, ordinances, and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese people, pledge our national honor, determined will and full resources.

CHAPTER 1

THE EMPEROR

Article I. The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people.

Article II. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article III. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article IV. The Emperor shall perform only such state functions as are provided for in this constitu-

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tion. Never shall he have powers related to government.

The Emperor may delegate his functions as may be provided by law.

Article V. When, in accordance with the Imperial House Law, a regency is established, the Regent shall exercise his functions in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article VI. The Emperor shall appoint the Prime Minister as designated by the Diet.

Article VII. The Emperor, with the advice and approval of the Cabinet, shall perform the following functions of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of General Election.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article VIII. No property can be given to, or received by, the Imperial House, and no gifts can be made thereby, without the authorization of the Diet.

CHAPTER 2

RENUNCIATION OF WAR

Article IX. War, as a sovereign right of the nation, and the threat or use of force, is forever renounced as a means of settling disputes with other nations.

The maintenance of land, sea, and air forces, as well as other war potential, will never be authorized. The right of belligerency of the state will not be recognized.

CHAPTER 3

RIGHTS AND DUTIES OF THE PEOPLE

Article X. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article XI. The enjoyment of the freedoms and rights guaranteed to the people by this constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article XII. All of the people

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shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article XIII. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin. No peerage shall be granted. No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of damage and other matters, for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article XVII. Freedom of thought and conscience shall be held inviolable.

Article XVIII. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article XIX. Freedom of assembly, association, speech and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XX. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article XXI. Academic freedom is guaranteed.

Article XXII. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of

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spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIII. In all spheres of life, laws shall be designed for the promotion and extension of social welfare and security, and of public health.

Article XXIV. All people shall have the right to receive an equal education correspondent to his ability, as provided by law.

All people shall be obligated to insure that all of the children under his protection receive elementary education. Such education shall be free.

Article XXV. All people have the right to work. Standards for working conditions, wages and hours shall be fixed by law. The exploitation of children shall be prohibited.

Article XXVI. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article XXVIII. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article XXIX. No person shall be denied the right of access to the courts.

Article XXX. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article XXXI. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; he shall not be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXII. The right of the people to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and things to be seized, or except as provided by Article XXX.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXIII. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXIV. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compul-

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sory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article XXXV. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXVI. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he, in any way, be placed in double jeopardy.

CHAPTER 4

THE DIET

Article XXXVII. The Diet shall be the highest organ of state power, and shall be the sole law-making authority of the State.

Article XXXVIII. The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.

Article XXXIX. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article XL. The qualifications of electors and members for both Houses shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status or family origin.

Article XLI. The term of office of members of the House of Representatives shall be 4 years. However, the term may be terminated before the full term is up by dissolution of the House of Representatives.

Article XLII. The term of office of the members of the House of Councillors shall be six years. Election for half the members shall take place every three years.

Article XLIII. Matters pertaining to the method of election of members of both Houses, electoral districts, and method of voting shall be fixed by law.

Article XLIV. No person shall be permitted to be a member of both Houses simultaneously.

Article XLV. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with the law.

Article XLVI. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any members arrested before the opening of the session shall be freed during the term of the session upon demand of the House.

Article XLVII. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article XLVIII. An ordinary session of the Diet shall be convoked once per year.

Article XLIX. The Cabinet may

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call extraordinary sessions of the Diet. When a quarter or more of the total members of either house makes the demand, the Diet must be called into session.

Article L. When the House of Representatives is ordered dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved, the House of Councillors must, at the same time, be closed, except that the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures enacted at such session shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article LI. Each House shall judge disputes related to qualifications and elections of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article LII. Business cannot be transacted in either House unless at least one-third of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article LIII. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be present, votes of the members be recorded in the minutes.

Article LIV. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings and proceedings and internal discipline may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article LV. A bill becomes a law on passage by both Houses, except as otherwise provided by this Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or

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more of the members present.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection.

Article LVI. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, or in the case of failure by the House of Councillors to take final action within forty (40) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives will be considered the decision of the Diet.

Article LVII. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article LVIII. Each House may conduct investigations in relation to national affairs, and may compel the presence and testimony of witnesses, and the production of records.

Article LIX. The Prime Minister, and the Ministers of State, may at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article LX. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER 5

THE CABINET

Article IXI. Executive power shall be vested in the Cabinet.

Article LXII. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article LXIII. The Prime Minister shall be designated by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both houses, provided for by law, cannot reach an agreement, or the House of Councillors fails to make designation within twenty (20) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article LXIV. The Prime Minister shall with the approval of the Diet, appoint the Ministers of State. The second paragraph of the preceding article shall apply to this

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approval.

The Prime Minister may remove the Ministers of State as he chooses.

Article LXV. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten days.

Article LXVI. When there is a vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election, the Cabinet shall resign en masse.

Article LXVII. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article LXVIII. The Prime Minister representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises supervision and control over various administrative branches.

Article LXIX. The Cabinet, in addition to other general administrative functions shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by law, administer the civil service.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to carry out the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article LXX. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article LXXI. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER 6
JUDICIARY

Article LXXII. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXXIII. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be sub-

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ject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXXIV. Removals of judges shall be accomplished by public impeachment only unless judicially declared mentally or physically imcompetent. No disciplinary action shall be administered by any executive organ or agency.

Article LXXV. The Supreme Court shall consist of such number of judges as may be determined by law; all such judges shall be appointed by the Cabinet and shall be retired upon the attainment of the age as fixed by law.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

All such judges shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVI. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten years with privilege of reappointment, provided that, they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVII. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article LXXVIII. Trials shall be conducted and judgement declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press, and cases wherein the rights of people as reserved in Chapter 3 of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER 7

FINANCE

Article LXXIX. The power to administer national finances shall be exercised as the Diet shall determine.

Article LXXX. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may pres-

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cribe.

Article LXXXI. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article LXXXII. The Cabinet shall prepare and submit to the Diet for its consideration and decision an annual budget for each fiscal year.

Article LXXXIII. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXIV. All property of the Imperial Household, other than the hereditary estates, shall belong to the State. The income from all Imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXV. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of Public authority.

Article LXXXVI. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be determined by law.

Article LXXXVII. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER 8
LOCAL SELF GOVERNMENT

Article LXXXVIII. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article LXXXIX. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their legislative assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article XC. Local public entities shall have the right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article XCI. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

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CHAPTER 9

AMENDMENTS

Article XCII. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majortiy of all votes cast at a special referendum thereon, or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor in the name of the People, as an integral part of this Constitution.

CHAPTER 10

SUPREME LAW

Article XCIII. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article XCIV. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the state and no public law or ordinance and no imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Article XCV. The Emperor or the Regent, the Ministers of State, the members of the Diet judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER 11

SUPPLEMENTARY PROVISIONS

Article XCVI. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article XCVII. As regards those who hold peerage on the effective date of this Constitution, their title shall remain valid for their lives, but no right of peerage shall from this time forth embody within itself any power of government.

Article XCVIII. If the house of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall sit as the Diet on that date and until such time as the House of Councillors shall be constituted.

Article XCIX. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

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Article C. The Ministers of State members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on the effective date of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

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Draft of Japanese Constitution
(Fourth Government Draft), submitted
to House of Representatives on 20 June, 1946 [Japanese]

A 189.1

帝國憲法改正案

日本國憲法

日本國民は、國會における正當に選擧された代表者を通じて、我ら自身と子孫のために、諸國民との間に平和的協力を成立させ、日本國全土にわたつて自由の福祉を確保し、政府の行爲によつて再び戰爭の慘禍が發生しないやうにすることを決意し、ここに國民の總意が至高なものであることを宣言し、この憲法を確定する。そもそも國政は、國民の崇高な信託によるものであり、その權威は國民に由來し、その權力は國民の代表者がこれを行ひ、その利益は國民がこれを受けるものであつて、これは人類普遍の原理であり、この憲法は、この原理に基くものである。我らは、この憲法に反する一切の法令と詔勅を廢止する。

日本國民は、常に平和を念願し、人間相互の關係を支配する高遠な理想を深く自覺するものであつて、我らの安全と生存をあげて、平和を愛する世界の諸國民の公正と信義に委ねようと決意した。我らは、平和を維持し、專制と隷從と壓迫と偏狹を地上から永遠に拂拭しようと努

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めてゐる國際社會に伍して、名譽ある地位を占めたいものと思ふ。我らは、すべての國の國民が、ひとしく恐怖と缺乏から解放され、平和のうちに生存する權利を有することを確認する。

我らは、いづれの國家も、自國のことのみに專念して他國を無視してはならぬのであつて、政治道德の法則は、普遍的なものであると信ずる。この法則に從ふことは、自國の主權を維持し、他國と對等關係に立たうとする各國の責務であると信ずる。

日本國民は、國家の名譽に懸け、全力をあげてこの高遠な主義と目的を達成することを誓ふ。

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第一章　天皇

第一條　天皇は、日本國の象徴であり日本國民統合の象徴であつて、この地位は、日本國民の至高の總意に基く。

第二條　皇位は、世襲のものであつて、國會の議決した皇室典範の定めるところにより、これを繼承する。

第三條　天皇の國務に關するすべての行爲には、内閣の助言と承認を必要とし、内閣が、その責任を負ふ。

第四條　天皇は、この憲法の定める國務のみを行ひ、政治に關する權能を有しない。

天皇は、法律の定めるところにより、その權能を委任することができる。

第五條　皇室典範の定めるところにより攝政を置くときは、攝政は、天皇の名でその權能を行ふ。この場合には、前條第一項の規定を準用する。

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第六條　天皇は、國會の指名に基いて、内閣總理大臣を任命する。

第七條　天皇は、内閣の助言と承認により、國民のために、左の國務を行ふ。

一　憲法改正、法律、政令及び條約を公布すること。

二　國會を召集すること。

三　衆議院を解散すること。

四　國會議員の總選擧の施行を公示すること。

五　國務大臣及び法律の定めるその他の官吏の任免竝びに全權委任狀及び大使及び公使の信任狀を認證すること。

六　大赦、特赦、減刑、刑の執行の免除及び復權を認證すること。

七　榮典を授與すること。

八　批准書及び法律の定めるその他の外交文書を認證すること。

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九　外國の大使及び公使を接受すること。

十　儀式を行ふこと。

第八條　皇室に財産を讓り渡し、又は皇室が、財産を讓り受け、若しくは賜與することは、國會の議決に基かなければならない。

第二章　戰爭の拋棄

第九條　國の主權の發動たる戰爭と、武力による威嚇又は武力の行使は、他國との間の紛爭の解決の手段としては、永久にこれを拋棄する。

陸海空軍その他の戰力は、これを保持してはならない。國の交戰權は、これを認めない。

第三章　國民の權利及び義務

第十條　國民は、すべての基本的人權の享有を妨げられない。この憲法が國民に保障する基本的人權は、侵すことのできない永久の權利として、現在及び將來の國民に與へられる。

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第十一條　この憲法が國民に保障する自由及び權利は、國民の不斷の努力によつて、これを保持しなければならない。又、國民は、これを濫用してはならぬのであつて、常に公共の福祉のためにこれを利用する責任を負ふ。

第十二條　すべて國民は、個人として尊重される。生命、自由及び幸福追求に對する國民の權利については、公共の福祉に反しない限り、立法その他の國政の上で、最大の尊重を必要とする。

第十三條　すべて國民は、法の下に平等であつて、人種、信條、性別、社會的身分又は門地により、政治的、經濟的又は社會的關係において、差別を受けない。

華族その他の貴族の制度は、これを認めない。

榮譽、勳章その他の榮典の授與は、いかなる特權も伴はない。榮典の授與は、現にこれを有し、又は將來これを受ける者の一代に限り、その效力を有する。

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第十四條　公務員を選定し、及びこれを罷免することは、國民固有の權利である。

すべて公務員は、全體の奉仕者であつて、一部の奉仕者ではない。

すべて選擧における投票の秘密は、これを侵してはならない。選擧人は、その選擇に關し公的にも私的にも責任を問はれない。

第十五條　何人も、損害の救濟、公務員の罷免、法律、命令又は規則の制定、廢止又は改正その他の事項に關し、平穩に請願する權利を有し、何人も、かかる請願をしたためにいかなる差別待遇も受けない。

第十六條　何人も、いかなる奴隸的拘束も受けない。又、犯罪に因る處罰の場合を除いては、その意に反する苦役に服させられない。

第十七條　思想及び良心の自由は、これを侵してはならない。

第十八條　信教の自由は、何人に對してもこれを保障する。いかなる宗教團體も、國から特權

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を受け、又は政治上の權力を行使してはならない。

何人も、宗教上の行爲、祝典、儀式又は行事に參加することを強制されない。

國及びその機關は、宗教教育その他いかなる宗教的活動もしてはならない。

第十九條　集會、結社及び言論、出版その他一切の表現の自由は、これを保障する。

檢閲は、これをしてはならない。通信の祕密は、これを侵してはならない。

第二十條　何人も、公共の福祉に反しない限り、居住、移轉及び職業選擇の自由を有する。

何人も、外國に移住し、又は國籍を離脫する自由を侵されない。

第二十一條　學問の自由は、これを保障する。

第二十二條　婚姻は、兩性の合意のみに基いて成立し、夫婦が同等の權利を有することを基本として、相互の協力により、維持されなければならない。

配偶者の選擇、財產權、相續、住居の選定、離婚竝びに婚姻及び家族に關するその他の事項

A 19-9

に關しては、法律は、個人の權威と兩性の本質的平等に立脚して、制定されなければならない。

第二十三條　法律は、すべての生活部面について、社會の福祉、生活の保障及び公衆衞生の向上及び增進のために立案されなければならない。

第二十四條　すべて國民は、法律の定めるところにより、その能力に應じて、ひとしく教育を受ける權利を有する。

すべて國民は、その保護する兒童に初等教育を受けさせる義務を負ふ。初等教育は、これを無償とする。

第二十五條　すべて國民は、勤勞の權利を有する。

賃金、就業時間その他の勤勞條件に關する基準は、法律でこれを定める。

兒童は、これを酷使してはならない。

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第二十六條　勤勞者の團結する權利及び團體交涉その他の團體行動をする權利は、これを保障する。

第二十七條　財產權は、これを侵してはならない。

財產權の內容は、公共の福祉に適合するやうに、法律でこれを定める。

私有財產は、正當な補償の下に、これを公共のために用ひることができる。

第二十八條　何人も、法律の定める手續によらなければ、その生命若しくは自由を奪はれ、又はその他の刑罰を科せられない。

第二十九條　何人も、裁判所において裁判を受ける權利を奪はれない。

第三十條　何人も、現行犯として逮捕される場合を除いては、權限を有する司法官憲が發し、且つ理由となつてゐる犯罪を明示する令狀によらなければ、逮捕されない。

第三十一條　何人も、理由を直ちに告げられ、且つ、直ちに辯護人に依頼する權利を與へられ

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なければ、抑留又は拘禁されない。又、何人も、正當な理由がなければ、拘禁されず、要求があれば、その理由は、直ちに本人及びその辯護人の出席する公開の法廷で示されなければならない。

第三十二條　何人も、その住居、書類及び所持品について、侵入、捜索及び押收を受けることのない權利は、第三十條の場合を除いては、正當な理由に基いて發せられ、且つ捜索する場所及び押收する物を明示する令狀がなければ、侵されない。

捜索又は押收は、權限を有する司法官憲が發する各別の令狀により、これを行ふ。

第三十三條　公務員による拷問及び殘虐な刑罰は、絶對にこれを禁ずる。

第三十四條　すべて刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける權利を有する。

刑事被告人は、すべての證人に對して審問する機會を充分に與へられ、又、公費で自己の

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ために強制的手續により證人を求める權利を有する。

刑事被告人は、いかなる場合にも、資格を有する辯護人を依頼することができる。被告人が自らこれを依頼することができないときは、國でこれを附する。

第三十五條　何人も、自己に不利益な供述を強要されない。

強制、拷問若しくは脅迫の下での自白又は不當に長く抑留若しくは拘禁された後の自白は、これを證據とすることができない。

何人も、自己に不利益な唯一の證據が本人の自白である場合には、有罪とされ、又は刑罰を科せられない。

第三十六條　何人も、實行の時に適法であつた行爲又は既に無罪とされた行爲については、刑事上の責任を問はれない。又、同一の犯罪について、重ねて刑事上の責任を問はれない。

第四章　國會

第三十七條　國會は、國權の最高機關であつて、國の唯一の立法機關である。

第三十八條　國會は、衆議院及び參議院の兩議院でこれを構成する。

第三十九條　兩議院は、全國民を代表する選擧された議員でこれを組織する。

兩議院の議員の定數は、法律でこれを定める。

第四十條　兩議院の議員及びその選擧人の資格は、法律でこれを定める。但し、人種、信條、性別、社會的身分又は門地によつて差別してはならない。

第四十一條　衆議院議員の任期は、四年とする。但し、衆議院解散の場合には、その期間滿了前に終了する。

第四十二條　參議院議員の任期は、六年とし、三年ごとに議員の半數を改選する。

第四十三條　選擧區、投票の方法その他兩議院の議員の選擧に關する事項は、法律でこれを定める。

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第四十四條　何人も、同時に兩議院の議員たることはできない。

第四十五條　兩議院の議員は、法律の定めるところにより、國庫から相當額の歲費を受ける。

第四十六條　兩議院の議員は、法律の定める場合を除いては、國會の會期中逮捕されず、會期前に逮捕された議員は、その議院の要求があれば、會期中これを釋放しなければならない。

第四十七條　兩議院の議員は、議院で行つた演說、討論又は表決について、院外で責任を問はれない。

第四十八條　國會の常會は、毎年一回これを召集する。

第四十九條　内閣は、國會の臨時會の召集を決定することができる。いづれかの議院の總議員の四分の一以上の要求があれば、内閣は、その召集を決定しなければならない。

第五十條　衆議院が解散されたときは、解散の日から四十日以内に、衆議院議員の總選擧を行ひ、その選擧の日から三十日以内に、國會を召集しなければならない。

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衆議院が解散されたときは、参議院は、同時に閉會となる。但し、内閣は、國に緊急の必要があるときは、参議院の緊急集會を求めることができる。

前項但書の緊急集會において採られた措置は、臨時のものであつて、次の國會開會の後十日以内に、衆議院の同意がない場合には、その效力を失ふ。

第五十一條　兩議院は、各、その議員の選擧又は資格に關する爭訟を裁判する。但し、議員の議席を失はせるには、出席議員の三分の二以上の多數による議決を必要とする。

第五十二條　兩議院は、各、その總議員の三分の一以上の出席がなければ、議事を開き議決することができない。

兩議院の議事は、この憲法に特別の定のある場合を除いては、出席議員の過半數でこれを決し、可否同數のときは、議長の決するところによる。

第五十三條　兩議院の會議は、公開とする。但し、出席議員の三分の二以上の多數で議決したとき

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ときは、祕密會を開くことができる。

兩議院は、各〻その會議の記錄を保存し、祕密會の記錄の中で特に祕密を要すると認められるもの以外は、これを公表し、且つ一般に頒布しなければならない。

出席議員の五分の一以上の要求があれば、各議員の表決は、これを會議錄に記載しなければならない。

第五十四條　兩議院は、各〻その議長その他の役員を選任する。

兩議院は、各〻その會議その他の手續及び內部の規律に關する規則を定め、又、院內の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多數による議決を必要とする。

第五十五條　法律案は、この憲法に特別の定のある場合を除いては、兩議院で可決したとき法律となる。

衆議院で可決し、參議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多數で再び可決したときは、法律となる。

參議院が、衆議院の可決した法律案を受け取つた後、國會休會中の期間を除いて六十日以内に、議決しないときは、衆議院は、參議院がその法律案を否決したものとみなすことができる。

第五十六條　豫算は、さきに衆議院に提出しなければならない。

豫算について、參議院で衆議院と異なつた議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は參議院が、衆議院の可決した豫算を受け取つた後、國會休會中の期間を除いて四十日以内に、議決しないときは、衆議院の議決を國會の議決とする。

第五十七條　條約の締結に必要な國會の承認については、前條第二項の規定を準用する。

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第五十八條　兩議院は、各、國務に關する調査を行ひ、これに關して、證人の出頭及び證言竝びに記錄の提出を要求することができる。

第五十九條　內閣總理大臣その他の國務大臣は、兩議院の一に議席を有すると有しないとにかかはらず、何時でも議案について發言するため議院に出席することができる。又、答辯又は說明のため出席を求められたときは、出席しなければならない。

第六十條　國會は、罷免の訴追を受けた裁判官を裁判するため、兩議院の議員で組織する彈劾裁判所を設ける。

彈劾に關する事項は、法律でこれを定める。

第五章　內閣

第六十一條　行政權は、內閣に屬する。

第六十二條　內閣は、法律の定めるところにより、その首長たる內閣總理大臣及びその他の國

務大臣でこれを組織する。

内閣は、行政權の行使について、國會に對し連帶して責任を負ふ。

第六十三條　内閣總理大臣は、國會の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。

衆議院と參議院とが異なつた指名の議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は衆議院が指名の議決をした後、國會休會中の期間を除いて二十日以内に、參議院が、指名の議決をしないときは、衆議院の議決を國會の議決とする。

第六十四條　内閣總理大臣は、國會の承認により、國務大臣を任命する。この承認については、前條第二項の規定を準用する。

内閣總理大臣は、任意に國務大臣を罷免することができる。

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第六十五條　内閣は、衆議院で不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、總辭職をしなければならない。

第六十六條　内閣總理大臣が缺けたとき、又は衆議院議員總選擧の後に初めて國會の召集があつたときは、内閣は、總辭職をしなければならない。

第六十七條　前二條の場合には、内閣は、あらたに内閣總理大臣が任命されるまで引き續きその職務を行ふ。

第六十八條　内閣總理大臣は、内閣を代表して議案を國會に提出し、一般國務及び外交關係について國會に報告し、並びに行政各部を指揮監督する。

第六十九條　内閣は、他の一般行政事務の外、左の事務を行ふ。

一　法律を誠實に執行し、國務を總理すること。

二　外交關係を處理すること。

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三　條約を締結すること。但し、事前に、時宜によつては事後に、國會の承認を經ることを必要とする。

四　法律の定める基準に從ひ、官吏に關する事務を掌理すること。

五　豫算を作成して國會に提出すること。

六　この憲法及び法律の規定を實施するために、政令を制定すること。但し、政令には、特にその法律の委任がある場合を除いては、罰則を設けることができない。

七　大赦、特赦、減刑、刑の執行の免除及び復權を決定すること。

第七十條　法律及び政令には、すべて主任の國務大臣が署名し、内閣總理大臣が連署することを必要とする。

第七十一條　國務大臣は、その在任中、内閣總理大臣の同意がなければ、訴追されない。但し、これがため、訴追の權利は、害されない。

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第六章　司法

第七十二條　すべて司法權は、最高裁判所及び法律の定めるところにより設置する下級裁判所に屬する。

特別裁判所は、これを設置することができない。行政機關は、終審として裁判を行ふことができない。

すべて裁判官は、その良心に從ひ獨立してその職權を行ひ、この憲法及び法律にのみ拘束される。

第七十三條　最高裁判所は、訴訟に關する手續、辯護士、裁判所の内部規律及び司法事務處理に關する事項について、規則を定める權限を有する。

檢察官は、最高裁判所の定める規則に從はなければならない。

最高裁判所は、下級裁判所に關する規則を定める權限を、下級裁判所に委任することがで

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きる。

第七十四條　裁判官は、裁判により、心身の故障のために職務を執ることができないと決定された場合を除いては、公の彈劾によらなければ罷免されない。裁判官の懲戒處分は、行政機關がこれを行ふことはできない。

第七十五條　最高裁判所は、法律の定める員數の裁判官でこれを構成し、その裁判官は、すべて内閣でこれを任命し、法律の定める年齢に達した時に退官する。

最高裁判所の裁判官の任命は、その任命後初めて行はれる衆議院議員總選擧の際國民の審査に付し、その後十年を經過した後初めて行はれる衆議院議員總選擧の際更に審査に付し、その後も同樣とする。

前項の場合において、投票者の多數が裁判官の罷免を可とするときは、その裁判官は、罷免される。

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審査に關する事項は、法律でこれを定める。

最高裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第七十六條　下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣でこれを任命する。その裁判官は、任期を十年とし、再任されることができる。但し、法律の定める年齢に達した時には退官する。

下級裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第七十七條　最高裁判所は、終審裁判所である。

最高裁判所は、一切の法律、命令、規則又は處分が憲法に適合するかしないかを決定する權限を有する。

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第七十八條　裁判の對審及び判決は、公開法廷でこれを行ふ。

裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害する虞があると決した場合には、對審は、公開しないでこれを行ふことができる。但し、政治犯罪、出版に關する犯罪又はこの憲法第三章で保障する國民の權利が問題となつてゐる事件の對審は、常にこれを公開しなければならない。

第七章　財政

第七十九條　國の財政を處理する權限は、國會の議決に基いて、これを行使しなければならない。

第八十條　あらたに租稅を課し、又は現行の租稅を變更するには、法律又は法律の定める條件によることを必要とする。

第八十一條　國費を支出し、又は國が債務を負擔するには、國會の議決に基くことを必要とす

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る。

第八十二條　内閣は、毎會計年度の豫算を作成し、國會に提出して、その審議を受け議決を經なければならない。

第八十三條　豫見し難い豫算の不足に充てるため、國會の議決に基いて豫備費を設け、内閣の責任でこれを支出することができる。

すべて豫備費の支出については、内閣は、事後に國會の承諾を得なければならない。

第八十四條　世襲財産以外の皇室の財産は、すべて國に屬する。皇室財産から生ずる收益は、すべて國庫の收入とし、法律の定める皇室の支出は、豫算に計上して國會の議決を經なければならない。

第八十五條　公金その他の公の財産は、宗教上の組織若しくは團體の使用、便益若しくは維持のため、又は公の支配に屬しない慈善、教育若しくは博愛の事業に對し、これを支出し、又は

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その利用に供してはならない。

第八十六條　國の收入支出の決算は、すべて毎年會計檢査院がこれを檢査し、内閣は、次の年度に、その檢査報告とともに、これを國會に提出しなければならない。

會計檢査院の組織及び權限は、法律でこれを定める。

第八十七條　内閣は、國會及び國民に對し、定期に、少くとも毎年一回、國の財政狀況について報告しなければならない。

第八章　地方自治

第八十八條　地方公共團體の組織及び運營に關する事項は、地方自治の本旨に基いて、法律でこれを定める。

第八十九條　地方公共團體には、法律の定めるところにより、その議事機關として議會を設置する。

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地方公共團體の長、その議會の議員及び法律の定めるその他の吏員は、その地方公共團體の住民が、直接これを選擧する。

第九十條　地方公共團體は、その財産を管理し、事務を處理し、及び行政を執行する權能を有し、法律の範圍内で條例を制定することができる。

第九十一條　一の地方公共團體のみに適用される特別法は、法律の定めるところにより、その地方公共團體の住民の投票においてその過半數の同意を得なければ、國會は、これを制定することができない。

第九章　改正

第九十二條　この憲法の改正は、各議院の總議員の三分の二以上の贊成で、國會が、これを發議し、國民に提案してその承認を經なければならない。この承認には、特別の國民投票又は國會の定める選擧の際行はれる投票において、その過半數の贊成を必要とする。

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憲法改正について前項の承認を經たときは、天皇は、國民の名で、この憲法と一體を成すものとして、直ちにこれを公布する。

第十章　最高法規

第九十三條　この憲法が日本國民に保障する基本的人權は、人類の多年にわたる自由獲得の努力の成果であつて、これらの權利は、過去幾多の試錬に堪へ、現在及び將來の國民に對し、侵すことのできない永久の權利として信託されたものである。

第九十四條　この憲法並びにこれに基いて制定された法律及び條約は、國の最高法規とし、その條規に反する法律、命令、詔勅及び國務に關するその他の行爲の全部又は一部は、その效力を有しない。

第九十五條　天皇又は攝政及び國務大臣、國會議員、裁判官その他の公務員は、この憲法を尊重し擁護する義務を負ふ。

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第十一章　補則

第九十六條　この憲法は、公布の日から起算して六箇月を經過した日から、これを施行する。

この憲法を施行するために必要な法律の制定、參議院議員の選擧及び國會召集の手續竝びにこの憲法を施行するために必要な準備手續は、前項の期日よりも前に、これを行ふことができる。

第九十七條　この憲法施行の際現に華族その他の貴族の地位にある者については、その地位は、その生存中に限り、これを認める。但し、將來、華族その他の貴族たることにより、いかなる政治的權力も有しない。

第九十八條　この憲法施行の際、參議院がまだ成立してゐないときは、その成立するまでの間、衆議院は、國會としての權限を行ふ。

第九十九條　この憲法による第一期の參議院議員のうち、その半數の者の任期は、これを三年

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とする。その議員は、法律の定めるところにより、これを定める。

第百條　この憲法施行の際現に在職する國務大臣、衆議院議員及び裁判官並びにその他の公務員で、その地位に相應する地位がこの憲法で認められてゐる者は、法律で特別の定をした場合を除いては、この憲法施行のため、當然にはその地位を失ふことはない。但し、この憲法によつて、後任者が選擧又は任命されたときは、當然その地位を失ふ。

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Draft of Japanese Constitution
(Fourth Government Draft), submitted to
House of Representatives on 20 June, 1946 [English]

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Draft
of
Japanese Constitution

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Draft of Japanese Constitution

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese people, pledge our national honor, determined will and full resources.

CHAPTER 1
THE EMPEROR

Article I. The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people.

Article II. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article III. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article IV. The Emperor shall

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perform only such state functions as are provided for in this Constitution. Never shall he have powers related to government.

The Emperor may delegate his functions as may be provided by law.

Article V. When, in accordance with the Imperial House Law, a regency is established, the Regent shall exercise his functions in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article VI. The Emperor shall appoint the Prime Minister as designated by the Diet.

Article VII. The Emperor, with the advice and approval of the Cabinet, shall perform the following functions of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of General Election.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article VIII. No property can be given to, or received by, the Imperial House, and no gifts can be made thereby, without the authorization of the Diet.

CHAPTER 2

RENUNCIATION OF WAR

Article IX. War, as a sovereign right of the nation, and the threat or use of force, is forever renounced as a means of settling disputes with other nations.

The maintenance of land, sea, and air forces, as well as other war potential, will never be authorized. The right of belligerency of the state will not be recognized.

CHAPTER 3

RIGHTS AND DUTIES OF THE PEOPLE

Article X The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article XI. The enjoyment of the freedoms and rights guaranteed to the people by this Constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article XII. All of the people shall

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be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article XIII. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin. No peerage shall be granted. No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article XVII. Freedom of thought and conscience shall be held inviolable.

Article XVIII. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article XIX. Freedom of assembly, association, speech and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XX, Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article XXI. Academic fredom is guaranteed.

Article XXII. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

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Article XXIII. In all spheres of life, laws shall be designed for the promotion and extension of social welfare and security, and of public health.

Article XXIV. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to insure that all of the children under their protection receive elementary education. Such education shall be free.

Article XXV. All people have the right to work. Standards for working conditions, wages and hours shall be fixed by law. The exploitation of childlren shall be prohihited.

Article XXVI. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article XXVIII. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article XXIX. No person shall be denied the right of access to the courts.

Article XXX. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article XXXI. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXII. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be seached and things to be seized, or except as provided by Article XXX.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXIII. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXIV. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permittel full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article XXXV. No person shall be compelled to testify against himself.

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No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXVI. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted nor shall he, in any way, be placed in double jeopardy.

CHAPTEI 4

THE DIET

Article XXXVII. The Diet shall be the highest organ of state power, and shall be the sole law-making authority of the State.

Article XXXVII. The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.

Article XXXIX. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article XL. The qualifications of electors and members for both Houses shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status or family origin.

Article XLI. The term of office of members of the House of Representatives shall be four years. However, the term may be terminated before the full term is up by dissolution of the House of Representatives.

Article XLII. The term of office of the members of the House of Councillors shall be six years. Election for half the members shall take place every three years.

Article XLIII. Matters pertaining to the method of election of members of both Houses, electoral districts, and method of voting, shall be fixed by law.

Article XLIV. No person shall be permitted to be a member of both Houses simultaneously.

Article XLV. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article XLVI. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any members arrested before the opening of the session shall be freed during the term of the session upon demand of the House.

Article XLVII. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article XLVIII. An ordinary session of the Diet shall be convoked once per year.

Article XLIX. The Cabinet may call extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Diet must be called into session.

Article L. When the House of Representatives is ordered dissolved, there must be a general election of

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members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved, the House of Councillors must, at the same time, be closed, except that the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures enacted at such session shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article LI. Each House shall judge disputes related to qualifications and elections of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article LII. Business cannot be transacted in either House unless at least one-third of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article LIII. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article LIV. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article LV. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-tihrds or more of the members present.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, tiwe in recess excepted, may be determined by the House of Rrepresentatives to constitute a rejection.

Article LVI. The budget must first be submitted to the House of Representatives.

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Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, or in the case of failure by the House of Councillors to take final action within forty (40) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives will be considered the decision of the Diet.

Article LVII. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article LVIII. Each House may conduct investigations in relation to national affairs, and may compel the presence and testimony of witnesses, and the production of records.

Article LIX. The Prime Minister and the Ministers of State may, at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article LX. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER 5

THE CABINET

Article LXI. Executive power shall be vested in the Cabinet.

Article LXII. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Minisers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article LXIII. The Prime Minister shall be designated by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both Houses, provided for by law, cannot reach an agreement, or the House of Councillors fails to make designation within twenty (20) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet

Article LXIV. The Prime Minister shall, with the approval of the Diet appoint the Ministers of State. The second paragraph of the preceding article shall apply to this approval.

The Prime Minister may remove the Ministers of State as he chooses.

Article LXV. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article LXVI. When there is a

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vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election, the Cabinet shall resign en masse.

Article LXVII. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article LXVIII. The Prime Minister representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises supervision and control over various administrative branches.

Article LXIX. The Cabinet, in addition to other general administrative functions shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by law, administer the civil service.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to carry out the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article LXX. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article LXXI. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER 6

JUDICIARY

Article LXXII. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXXIII. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXXIV. Removals of judges shall be accomplished by public impeachment only unless judicially

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declared mentally or physically incompetent. No disciplinary action shall be administered by any executive organ or agency.

Article LXXV. The Supreme Court shall consist of such number of judges as may be determined by law; all such judges shall be appointed by the Cabinet and shall be retired upon the attainment of the age as fixed by law.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVI. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVII. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article LXXVIII. Trials shall be conducted and judgement declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press and cases wherein the rights of people as reserved in Chapter 3 of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER 7

FINANCE

Article LXXIX. The power to administer national finances shall be exercised as the Diet shall determine.

Article LXXX. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article LXXXI. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article LXXXII. The Cabinet shall prepare and submit to the Diet for its consideration and decision an annual budget for each fiscal year.

Article LXXXIII. In order to pro.-

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vide for unforeseen deficiencies in the budget a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXIV. All property of the Imperial Household, other than the hereditary estates, shall belong to the State. The income from all Imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXV. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of public authority.

Article LXXXVI. A final audit of all expenditures and revenues of the State shall be made annually by a Board of Audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article LXXXVII. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER 8

LOCAL SELF-GOVERNMENT

Article LXXXVIII. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article LXXXIX. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their legislative assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article XC. Local public entities shall have the right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article XCI. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER 9

AMENDMENTS

Article XCII. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast

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thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor in the name of the People, as an integral part of this Constitution.

CHAPTER 10
SUPREME LAW

Article XCIII. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article XCIV. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the state and no public law or ordinance and no imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Article XCV. The Emperor or the Regent, the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER 11
SUPPLEMENTARY PROVISIONS

Article XCVI. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceeding paragraph.

Article XCVII. As regards those who hold peerage on the effective date of this Constitution, their title shall remain valid for their lives, but no right of peerage shall from this time forth embody within itself any power of government.

Article XCVIII. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall sit as the Diet on that date and until such time as the House of Councillors shall be constituted.

Article XCIX. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article C. The Minister of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positins as are recognized by this Consti-

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tution shall not forfeit their positions automatically on the effective date of this Constitution unless othewise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

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Draft of Japanese Constitution (as amended
by House of Representatives on 24 August, 1946
and transmitted to the House of Peers on
30 August, 1946) [Japanese]

A 239.1

昭和二十一年八月二十一日報告
委第四二號

報告書

一　帝國憲法改正案（政府提出）

右は本院において別紙の通り修正すべきものと議決した因つてここに報告する

昭和二十一年八月二十一日

委員長　芦田均

衆議院議長　樋貝詮三殿

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（小字及び――は委員會修正）

日本國憲法

日本國民は、國會における正當に選擧された。○國會における代表者を通じて、行動し、われらとわれらの我ら自身と子孫のために、諸國民との間に協和による成果と、平和的協力を成立させ、わが日本國全土にわたつて自由の福祉もたらす惠澤を確保し、政府の行動行爲によつて再び戰爭の慘禍が發生しないやうにすることを決意し、ここに主權が國民に存する國民の總意が至高なものであることを宣言し、この憲法を確定する。そもそも國政は、國民の崇高な信託によるものであつて、あつて、その權威は國民に由來し、その權力は國民の代表者がこれを行使し、行ひ、その福利利益は國民がこれを享受するものである。受けるものであつて、これは人類普遍の原理であり、この憲法は、かかるこの原理に基く。ものである。われ我らは、これ この憲法に反する一切の○憲法、及び○法令と詔勅を排除廢止する。

日本國民は、常に平和を念願し、人間相互の關係を支配する高遠な理想を深く自覺するものであつて、われ我らの安全と生存をあげて、平和を愛する世界の諸國民の公正と信義に委ねようと

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決意した。我らは、平和を維持し、專制と隷從と壓迫と偏狹を地上から永遠に拂拭しようと努めてゐる國際社會に伍して、名譽ある地位を占めたいものと思ふ。我らは、全世界すべての國の國民が、ひとしく恐怖と缺乏から解放され、平和のうちに生存する權利を有することを確認する。

我らは、いづれの國家も、自國のことのみに專念して他國を無視してはならぬのであつて、政治道德の法則は、普遍的なものであると信ずる。この法則に從ふことは、自國の主權を維持し、他國と對等關係に立たうとする各國の責務であると信ずる。

日本國民は、國家の名譽に懸け、全力をあげてこの高遠な理想と目的を達成することを誓ふ。

第一章　天皇

第一條　天皇は、日本國の象徴であり日本國民統合の象徴であつて、この地位は、○主權の存する○日本國民の至高の總意に基く。

第二條　皇位は、世襲のものであつて、國會の議決した皇室典範の定めるところにより、これを繼承する。

第三條　天皇の國務（國事）に關するすべての行爲には、內閣の助言と承認を必要とし、內閣が、その責任を負ふ。

第四條　天皇は、この憲法の定める國務（國事に關する行爲）のみを行ひ、國政（政治）に關する權能を有しない。

天皇は、法律の定めるところにより、その權能（國事に關する行爲）を委任することができる。

第五條　皇室典範の定めるところにより攝政を置くときは、攝政は、天皇の名でその權能（國事に關する行爲）を行ふ。この場合には、前條第一項の規定を準用する。

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第六條　天皇は、國會の指名に基いて、內閣總理大臣を任命する。

天皇は、內閣の指名に基いて、最高裁判所の長たる裁判官を任命する。

第七條　天皇は、內閣の助言と承認により、國民のために、左の國事に關する行爲を行ふ。

一　憲法改正、法律、政令及び條約を公布すること。

二　國會を召集すること。

三　衆議院を解散すること。

四　國會議員の總選擧の施行を公示すること。

五　國務大臣及び法律の定めるその他の官吏の任免並びに全權委任狀及び大使及び公使の信任狀を認證すること。

六　大赦、特赦、減刑、刑の執行の免除及び復權を認證すること。

七　榮典を授與すること。

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八　批准書及び法律の定めるその他の外交文書を認證すること。

九　外國の大使及び公使を接受すること。

十　儀式を行ふこと。

第八條　皇室に財産を譲り渡し、又は皇室が、財産を譲り受け、若しくは賜與することは、國會の議決に基かなければならない。

第二章　戰爭の抛棄（放棄）

第九條　日本國民は、正義と秩序を基調とする國際平和を誠實に希求し、國權の主權の發動たる戰爭と、武力による威嚇又は武力の行使は、國際紛爭を他國との間の紛爭の解決の（する）手段としては、永久にこれを抛棄（放棄）する。

○前項の目的を達するため、

○陸海空軍その他の戰力は、これを保持してはならない。（しない。）國の交戰權は、これを認めない。

第三章　國民の權利及び義務

第十條　日本國民たる要件は、法律でこれを定める。

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第十一條　國民は、すべての基本的人權の享有を妨げられない。この憲法が國民に保障する基本的人權は、侵すことのできない永久の權利として、現在及び將來の國民に與へられる。

第十二條　この憲法が國民に保障する自由及び權利は、國民の不斷の努力によつて、これを保持しなければならない。又、國民は、これを濫用してはならぬ（ない）のであつて、常に公共の福祉のためにこれを利用する責任を負ふ。

第十三條　すべて國民は、個人として尊重される。生命、自由及び幸福追求に對する國民の權利については、公共の福祉に反しない限り、立法その他の國政の上で、最大の尊重を必要とする。

第十四條　すべて國民は、法の下に平等であつて、人種、信條、性別、社會的身分又は門地により、政治的、經濟的又は社會的關係において、差別を受けない（されない）。

華族その他の貴族の制度は、これを認めない。

榮譽、勳章その他の榮典の授與は、いかなる特權も伴はない。榮典の授與は、現にこれを有し、又は將來これを受ける者の一代に限り、その效力を有する。

第十四條　公務員を選定し、及びこれを罷免することは、國民固有の權利である。

すべて公務員は、全體の奉仕者であつて、一部の奉仕者ではない。

すべて選擧における投票の秘密は、これを侵してはならない。選擧人は、その選擇に關し公的にも私的にも責任を問はれない。

第十五條　何人も、損害の救濟、公務員の罷免、法律、命令又は規則の制定、廢止又は改正その他の事項に關し、平穩に請願する權利を有し、何人も、かかる請願をしたためにいかなる差別待遇も受けない。

第十六條　何人も、公務員の不法行爲により、損害を受けたときは、法律の定めるところにより、國又は公共團體に、その賠償を求

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めることができる。

第十六條　何人も、いかなる奴隷的拘束も受けない。又、犯罪に因る處罰の場合を除いては、その意に反する苦役に服させられない。

第十七條　思想及び良心の自由は、これを侵してはならない。

第十八條　信教の自由は、何人に對してもこれを保障する。いかなる宗教團體も、國から特權を受け、又は政治上の權力を行使してはならない。

何人も、宗教上の行爲、祝典、儀式又は行事に參加することを強制されない。

國及びその機關は、宗教教育その他いかなる宗教的活動もしてはならない。

第十九條　集會、結社及び言論、出版その他一切の表現の自由は、これを保障する。

檢閲は、これをしてはならない。通信の祕密は、これを侵してはならない。

第二十條　何人も、公共の福祉に反しない限り、居住、移轉及び職業選擇の自由を有する。

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何人も、外國に移住し、又は國籍を離脱する自由を侵されない。

第二十三條　學問の自由は、これを保障する。

第二十四條　婚姻は、兩性の合意のみに基いて成立し、夫婦が同等の權利を有することを基本として、相互の協力により、維持されなければならない。

配偶者の選擇、財産權、相續、住居の選定、離婚並びに婚姻及び家族に關するその他の事項に關しては、法律は、個人の尊嚴と兩性の本質的平等に立脚して、制定されなければならない。

第二十五條　すべて國民は、健康で文化的な最低限度の生活を營む權利を有する。

國は、すべての生活部面について、社會の福祉、社會生活の保障及び公衆衞生の向上及び增進のために努めに立案されなければならない。

第二十六條　すべて國民は、法律の定めるところにより、その能力に應じて、ひとしく教育を

受ける權利を有する。

すべて國民は、○法律の定めるところにより、子女普通教育を受けさせる義務を負ふ。義務教育は、これを無償とする。

第二十五條　すべて國民は、勤勞の權利を有し、義務を負ふ。

賃金、就業時間○、休息○その他の勤勞條件に關する基準は、法律でこれを定める。

兒童は、これを酷使してはならない。

第二十六條　勤勞者の團結する權利及び團體交渉その他の團體行動をする權利は、これを保障する。

第二十七條　財產權は、これを侵してはならない。

財產權の內容は、公共の福祉に適合するやうに、法律でこれを定める。

私有財產は、正當な補償の下に、これを公共のために用ひることができる。

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第三十條　國民は、法律の定めるところにより、納稅の義務を負ふ。

第三十一條　何人も、法律の定める手續によらなければ、その生命若しくは自由を奪はれ、又はその他の刑罰を科せられない。

第三十二條　何人も、裁判所において裁判を受ける權利を奪はれない。

第三十三條　何人も、現行犯として逮捕される場合を除いては、權限を有する司法官憲が發し、且つ理由となつてゐる犯罪を明示する令狀によらなければ、逮捕されない。

第三十四條　何人も、理由を直ちに告げられ、且つ、直ちに辯護人に依頼する權利を與へられなければ、抑留又は拘禁されない。又、何人も、正當な理由がなければ、拘禁されず、要求があれば、その理由は、直ちに本人及びその辯護人の出席する公開の法廷で示されなければならない。

第三十五條　何人も、その住居、書類及び所持品について、侵入、搜索及び押收を受けることの

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ない權利は、第三十三條の場合を除いては、正當な理由に基いて發せられ、且つ捜索する場所及び押收する物を明示する令狀がなければ、侵されない。

捜索又は押收は、權限を有する司法官憲が發する各別の令狀により、これを行ふ。

第三十六條　公務員による拷問及び殘虐な刑罰は、絶對にこれを禁ずる。

第三十七條　すべて刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける權利を有する。

刑事被告人は、すべての證人に對して審問する機會を充分に與へられ、又、公費で自己のために強制的手續により證人を求める權利を有する。

刑事被告人は、いかなる場合にも、資格を有する辯護人を依頼することができる。被告人が自らこれを依頼することができないときは、國でこれを附する。

第三十八條　何人も、自己に不利益な供述を强要されない。

強制、拷問若しくは脅迫の下（による）での自白又は不當に長く抑留若しくは拘禁された後の自白は、これを證據とすることができない。

何人も、自己に不利益な唯一の證據が本人の自白である場合には、有罪とされ、又は刑罰を科せられない。

第三十九條　何人も、實行の時に適法であつた行爲又は既に無罪とされた行爲については、刑事上の責任を問はれない。又、同一の犯罪について、重ねて刑事上の責任を問はれない。

第四十條　何人も、抑留又は拘禁された後、無罪の裁判を受けたときは、法律の定めるところにより、國にその補償を求めることができる。

第四章　國會

第四十一條　國會は、國權の最高機關であつて、國の唯一の立法機關である。

第四十二條　國會は、衆議院及び參議院の兩議院でこれを構成する。

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第四十三
三十九條　兩議院は、全國民を代表する選擧された議員でこれを組織する。

兩議院の議員の定數は、法律でこれを定める。

第四十四
四十條　兩議院の議員及びその選擧人の資格は、法律でこれを定める。但し、人種、信條、性別、社會的身分又は門地、教育、財産又は收入によつて差別してはならない。

第四十五
四十一條　衆議院議員の任期は、四年とする。但し、衆議院解散の場合には、その期間滿了前に終了する。

第四十六
四十二條　參議院議員の任期は、六年とし、三年ごとに議員の半數を改選する。

第四十七
四十三條　選擧區、投票の方法その他兩議院の議員の選擧に關する事項は、法律でこれを定める。

第四十八
四十四條　何人も、同時に兩議院の議員たることはできない。

第四十九
四十五條　兩議院の議員は、法律の定めるところにより、國庫から相當額の歲費を受ける。

第五十四條　兩議院の議員は、法律の定める場合を除いては、國會の會期中逮捕されず、會期前に逮捕された議員は、その議院の要求があれば、會期中これを釋放しなければならない。

第五十五條　兩議院の議員は、議院で行つた演說、討論又は表決について、院外で責任を問はれない。

第五十六條　國會の常會は、毎年一回これを召集する。

第五十七條　內閣は、國會の臨時會の召集を決定することができる。いづれかの議院の總議員の四分の一以上の要求があれば、內閣は、その召集を決定しなければならない。

第五十八條　衆議院が解散されたときは、解散の日から四十日以內に、衆議院議員の總選擧を行ひ、その選擧の日から三十日以內に、國會を召集しなければならない。

衆議院が解散されたときは、參議院は同時に閉會となる。但し、內閣は、國に緊急の必要があるときは、參議院の緊急集會を求めることができる。

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前項但書の緊急集會において採られた措置は、臨時のものであつて、次の國會開會の後十日以内に、衆議院の同意がない場合には、その効力を失ふ。

第五十五條　兩議院は、各〻その議員の選擧又は資格に關する爭訟を裁判する。但し、議員の議席を失はせるには、出席議員の三分の二以上の多數による議決を必要とする。

第五十六條　兩議院は、各〻その總議員の三分の一以上の出席がなければ、議事を開き議決することができない。

兩議院の議事は、この憲法に特別の定のある場合を除いては、出席議員の過半數でこれを決し、可否同數のときは、議長の決するところによる。

第五十七條　兩議院の會議は、公開とする。但し、出席議員の三分の二以上の多數で議決したときは、秘密會を開くことができる。

兩議院は、各〻その會議の記錄を保存し、秘密會の記錄の中で特に秘密を要すると認めら

れるもの以外は、これを公表し、且つ一般に頒布しなければならない。

出席議員の五分の一以上の要求があれば、各議員の表決は、これを會議錄に記載しなければならない。

第五十八條　兩議院は、各〻その議長その他の役員を選任する。

兩議院は、各〻その會議その他の手續及び內部の規律に關する規則を定め、又、院內の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多數による議決を必要とする。

第五十九條　法律案は、この憲法に特別の定のある場合を除いては、兩議院で可決したとき法律となる。

衆議院で可決し、參議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多數で再び可決したときは、法律となる。

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參議院が、衆議院の可決した法律案を受け取つた後、國會休會中の期間を除いて六十日以内に、議決しないときは、衆議院は、參議院がその法律案を否決したものとみなすことができる。

第五十六條　豫算は、さきに衆議院に提出しなければならない。

豫算について、參議院で衆議院と異なつた議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は參議院が、衆議院の可決した豫算を受け取つた後、國會休會中の期間を除いて三十日四十日以内に、議決しないときは、衆議院の議決を國會の議決とする。

第五十七條　條約の締結に必要な國會の承認については、前條第二項の規定を準用する。

第五十八條　兩議院は、各、國政國務に關する調査を行ひ、これに關して、證人の出頭及び證言並びに記錄の提出を要求することができる。

六十三
第五十九條　内閣總理大臣その他の國務大臣は、兩議院の一に議席を有すると有しないとにかかはらず、何時でも議案について發言するため議院に出席することができる。又、答辯又は說明のため出席を求められたときは、出席しなければならない。

六十四
第六十條　國會は、罷免の訴追を受けた裁判官を裁判するため、兩議院の議員で組織する彈劾裁判所を設ける。

彈劾に關する事項は、法律でこれを定める。

第五章　内閣

六十五
第六十一條　行政權は、内閣に屬する。

六十六
第六十二條　内閣は、法律の定めるところにより、その首長たる内閣總理大臣及びその他の國務大臣でこれを組織する。

内閣は、行政權の行使について、國會に對し連帶して責任を負ふ。

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第六十三條　内閣總理大臣は、○國會議員の中から○國會の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。

衆議院と參議院とが異なつた指名の議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は衆議院が指名の議決をした後、國會休會中の期間を除いて十日以内に、參議院が、指名の議決をしないときは、衆議院の議決を國會の議決とする。

第六十四條　内閣總理大臣は、國會の承認により、國務大臣を任命する。但し、その過半數は、國會議員の中から選ばれなければならない。この承認については、前條第一項の規定を準用する。

内閣總理大臣は、任意に國務大臣を罷免することができる。

第六十五條　内閣は、衆議院で不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、總辭職をしなければならない。

第六十六條（七十）　内閣總理大臣が缺けたとき、又は衆議院議員總選擧の後に初めて國會の召集があつたときは、内閣は、總辭職をしなければならない。

第六十七條（七十一）　前二條の場合には、内閣は、あらたに内閣總理大臣が任命されるまで引き續きその職務を行ふ。

第六十八條（七十二）　内閣總理大臣は、内閣を代表して議案を國會に提出し、一般國務及び外交關係について國會に報告し、並びに行政各部を指揮監督する。

第六十九條（七十三）　内閣は、他の一般行政事務の外、左の事務を行ふ。

一　法律を誠實に執行し、國務を總理すること。

二　外交關係を處理すること。

三　條約を締結すること。但し、事前に、時宜によつては事後に、國會の承認を經ることを必要とする。

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四　法律の定める基準に従ひ、官吏に關する事務を掌理すること。

五　豫算を作成して國會に提出すること。

六　この憲法及び法律の規定を實施するために、政令を制定すること。但し、政令には、特にその法律の委任がある場合を除いては、罰則を設けることができない。

七　大赦、特赦、減刑、刑の執行の免除及び復權を決定すること。

第七十四條　法律及び政令には、すべて主任の國務大臣が署名し、内閣總理大臣が連署することを必要とする。

第七十五條　國務大臣は、その在任中、内閣總理大臣の同意がなければ、訴追されない。但し、これがため、訴追の權利は、害されない。

第六章　司法

第七十六條　すべて司法權は、最高裁判所及び法律の定めるところにより設置する下級裁判

所に屬する。

特別裁判所は、これを設置することができない。行政機關は、終審として裁判を行ふことができない。

すべて裁判官は、その良心に從ひ獨立してその職權を行ひ、この憲法及び法律にのみ拘束される。

第七十七條　最高裁判所は、訴訟に關する手續、辯護士、裁判所の内部規律及び司法事務處理に關する事項について、規則を定める權限を有する。

檢察官は、最高裁判所の定める規則に從はなければならない。

最高裁判所は、下級裁判所に關する規則を定める權限を、下級裁判所に委任することができる。

第七十八條　裁判官は、裁判により、心身の故障のために職務を執ることができないと決定さ

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れた場合を除いては、公の彈劾によらなければ罷免されない。裁判官の懲戒處分は、行政機關がこれを行ふことはできない。

第七十九條　最高裁判所は、その長たる裁判官及びその他の法律の定める員數の裁判官でこれを構成し、その長たる裁判官以外の裁判官は、すべて內閣でこれを任命し、法律の定める年齡に達した時に退官する。

最高裁判所の裁判官の任命は、その任命後初めて行はれる衆議院議員總選擧の際國民の審査に付し、その後十年を經過した後初めて行はれる衆議院議員總選擧の際更に審査に付し、その後も同樣とする。

前項の場合において、投票者の多數が裁判官の罷免を可とするときは、その裁判官は、罷免される。

審査に關する事項は、法律でこれを定める。

最高裁判所の裁判官は、法律の定める年齡に達した時に退官する。

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最高裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第七十六條　下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣でこれを任命する。その裁判官は、任期を十年とし、再任されることができる。但し、法律の定める年齢に達した時には退官する。

下級裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第七十七條　最高裁判所は、終審裁判所である。

最高裁判所は、一切の法律、命令、規則又は處分が憲法に適合するかしないかを決定する權限を有する。（終審裁判所である。）

第七十八條　裁判の對審及び判決は、公開法廷でこれを行ふ。

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裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害する虞があると決した場合には、對審は、公開しないでこれを行ふことができる。但し、政治犯罪、出版に關する犯罪又はこの憲法第三章で保障する國民の權利が問題となつてゐる事件の對審は、常にこれを公開しなければならない。

第七章　財政

第八十三條　國の財政を處理する權限は、國會の議決に基いて、これを行使しなければならない。

第八十四條　あらたに租稅を課し、又は現行の租稅を變更するには、法律又は法律の定める條件によることを必要とする。

第八十五條　國費を支出し、又は國が債務を負擔するには、國會の議決に基くことを必要とする。

第八十二條　内閣は、毎會計年度の豫算を作成し、國會に提出して、その審議を受け議決を經なければならない。

第八十三條　豫見し難い豫算の不足に充てるため、國會の議決に基いて豫備費を設け、内閣の責任でこれを支出することができる。

すべて豫備費の支出については、内閣は、事後に國會の承諾を得なければならない。

第八十四條　世襲財産以外の皇室の財産は、すべて國に屬する。皇室財産から生ずる收益は、すべて國庫の收入とし、法律の定める皇室の費用の支出は、豫算に計上して國會の議決を經なければならない。

第八十五條　公金その他の公の財産は、宗教上の組織若しくは團體の使用、便益若しくは維持のため、又は公の支配に屬しない慈善、教育若しくは博愛の事業に對し、これを支出し、又はその利用に供してはならない。

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第八十六條　國の收入支出の決算は、すべて毎年會計檢査院がこれを檢査し、内閣は、次の年度に、その檢査報告とともに、これを國會に提出しなければならない。

會計檢査院の組織及び權限は、法律でこれを定める。

第八十七條　内閣は、國會及び國民に對し、定期に、少くとも毎年一回、國の財政狀況について報告しなければならない。

第八章　地方自治

第八十八條　地方公共團體の組織及び運營に關する事項は、地方自治の本旨に基いて、法律でこれを定める。

第八十九條　地方公共團體には、法律の定めるところにより、その議事機關として議會を設置する。

地方公共團體の長、その議會の議員及び法律の定めるその他の吏員は、その地方公共團體

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の住民が、直接これを選擧する。

第九十四條　地方公共團體は、その財産を管理し、事務を處理し、及び行政を執行する權能を有し、法律の範圍内で條例を制定することができる。

第九十五條　一の地方公共團體のみに適用される特別法は、法律の定めるところにより、その地方公共團體の住民の投票においてその過半數の同意を得なければ、國會は、これを制定することができない。

第九章　改正

第九十六條　この憲法の改正は、各議院の總議員の三分の二以上の贊成で、國會が、これを發議し、國民に提案してその承認を經なければならない。この承認には、特別の國民投票又は國會の定める選擧の際行はれる投票において、その過半數の贊成を必要とする。

憲法改正について前項の承認を經たときは、天皇は、國民の名で、この憲法と一體を成す

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ものとして、直ちにこれを公布する。

第十章　最高法規

第九十七條　この憲法が日本國民に保障する基本的人權は、人類の多年にわたる自由獲得の努力の成果であつて、これらの權利は、過去幾多の試錬に堪へ、現在及び將來の國民に對し、侵すことのできない永久の權利として信託されたものである。

第九十八條　この憲法は、國の最高法規であつて、その條規に反する法律、命令、詔勅及び國務に關するその他の行爲の全部又は一部は、その效力を有しない。

日本國が締結した條約及び確立された國際法規は、これを誠實に遵守することを必要とする。

第九十九條　天皇又は攝政及び國務大臣、國會議員、裁判官その他の公務員は、この憲法を尊重し擁護する義務を負ふ。

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第十一章　補則

第百九十六條　この憲法は、公布の日から起算して六箇月を經過した日から、これを施行する。

この憲法を施行するために必要な法律の制定、參議院議員の選擧及び國會召集の手續竝びにこの憲法を施行するために必要な準備手續は、前項の期日よりも前に、これを行ふことができる。

第百九十七條　この憲法施行の際現に華族その他の貴族の地位にある者については、その地位は、その生存中に限り、これを認める。但し、將來、華族その他の貴族たることにより、いかなる政治的權力も有しない。

第百九十八條　この憲法施行の際、參議院がまだ成立してゐないときは、その成立するまでの間、衆議院は、國會としての權限を行ふ。

第百九十九條　この憲法による第一期の參議院議員のうち、その半數の者の任期は、これを三年

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とする。その議員は、法律の定めるところにより、これを定める。

第百三條　この憲法施行の際現に在職する國務大臣、衆議院議員及び裁判官並びにその他の公務員で、その地位に相應する地位がこの憲法で認められてゐる者は、法律で特別の定をした場合を除いては、この憲法施行のため、當然にはその地位を失ふことはない。但し、この憲法によつて、後任者が選擧又は任命されたときは、當然その地位を失ふ。

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附帶決議

一、憲法改正案は憲法附屬の諸法典と相俟つて、始めてその運用の完全を期待し得るものである。然るに皇室典範、參議院法、內閣法その他多數の各種法令は、未だその輪廓さへ明かでないために、憲法の審議に當つても徹底を期し得なかつたことは、深く遺憾とするところである。政府は速かに是等諸法典を起案し、國民の輿論に問ふ準備をなすべきである。

二、改正憲法が生活權、勞働權等の經濟的基本權を確立したことは時代の要求に卽應する適切な措置であるが、然し是等の權利の裏附となるべき諸施設は、現狀を以ては頗る不充分なものがある。政府は速かに廣汎な社會政策を樹立し、當面の失業對策、社會保障制度の確立と同時に、他面生產の增强を圖り、以て經濟再建の促進に萬遺漏なきを期すべきである。

三、參議院は衆議院と均しく國民を代表する選擧せられたる議員を以て組織すとの原則はこ

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れを認むるも、これがために衆議院と重複する如き機關となり終ることは、その存在の意義を沒却するものである。政府は須くこの點に留意し、參議院の構成については、努めて社會各部門各職域の智識經驗ある者がその議員となるに容易なるよう考慮すべきである。

四、憲法改正案は、基本的人權を尊重して、民主的國家機構を確立し、文化國家として國民の道義的水準を昂揚し、進んで地球表面より一切の戰爭を驅逐せんとする高遠な理想を表明したものである。然し新しき世界の進運に適應する如く民衆の思想、感情を涵養し、前記の理想を達成するためには、國を擧げて絶大の努力をなさなければならぬ。吾等は政府が國民の總意を體し熱情と精力とを傾倒して、祖國再建と獨立完成のために邁進せんことを希望するものである。

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Draft of Japanese Constitution (as amended
by House of Representatives on 24 August, 1946
and transmitted to the House of Peers on
30 August, 1946) [English]

A 275.1

Draft
of
Japanese Constitution

(As Amended by the House of Representatives, August 24, 1946)

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Draft of Japanese Constitution

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese people, pledge our national honor, determined will and full resources.

CHAPTER I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides Sovereign power.

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Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution. Never shall he have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the chief judge of the Supreme Court, as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of General Election.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial

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House, and no gifts can be made thereby, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people, forever, renounce war as a sovereign right of the nation, or the threat or use of force, as a means of settling disputes with other nations.

For the above purpose, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

A rticle 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The enjoyment of the freedoms and rights guaranteed to the people by this Constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin. Peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

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Articls 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article 16. Every person has the right of peaceful petition for the edress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person has the right to sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall be held inviolable.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly, association, speech and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

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Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to insure that all boys and girls under their protection receive ordinary education as provided for by law. Such education shall be free.

Article 27. All people have the right and the obligation to work. Standards for working conditions, wages, hours and rest shall be fixed by law. The exploitation of children shall be prohibited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article 30. The people are liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article 34. No person shall be arrested or detained without being at

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once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article 38. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted nor shall he, in any way, be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER IV. THE DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making authority of the State.

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Article 42. The Diet shall consist of two houses, namely teh House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article 44. The qualifications of electors and members for both Houses shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term may be terminated before the full term is up by dissolution of the House of Representatives.

Article 46. The term of office of the members of the House of Councillors shall be six years. Election for half the members shall take place every three years.

Article 47. Matters pertaining to the method of election of members of both Houses, electoral districts, and method of voting, shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any members arrested before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

Article 53. The Cabinet may call extraordinary sessions of the Diet. When a quarter or more of the total members of either Houses makes the demand, the Diet must be called into session.

Article 54. When the House of Representatives is ordered dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet

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must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved, the House of Councillors must, at the same time, be closed, except that the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures enacted at such session shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56. Business cannot be transacted in either House unless at least one-third of total member-ship is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time

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by the House of Representatives by a majority of two-thirds or more of the members present.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection.

Article 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives will be considered the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may compel the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and the Ministers of State may, at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

Article 65. Executive power shall be vested in the Cabinet.

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both Houses, provided for by law, cannot reach an agreement, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their numbers must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises supervision and control over various administrative branches.

Article 73. The Cabinet, in addition to other general administrative functions shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by law, administer the civil service.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and counter-signed by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Removals of judges shall be accomplished by public impeachment only unless judicially declared mentally or physically imcompetent. No disciplinary action shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a chief judge and such number of judges as may be determined by law; all such judges excepting the chief judge shall be appointed by the Cabinet.

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The appointment of the judges of the Supreme Court shall e reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgement declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses involving the press and cases wherein the rights of people as reserved in Chapter III of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of public authority.

Article 90. A final audit of all expenditures and revenues of the State shall be made annually by a Board of Audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their legislative assemblies, and such other local officials as may be

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determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within such laws as the Diet may enact.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor in the name of the People, as an integral part of this Constitution.

CHAPTER X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article 98. This Constitution shall be the supreme law of the state and no public law or ordinance and no imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99. The Emperor or the Regent as well as the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

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CHAPTER XI. SUPPLEMENTARY PROVISIONS

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceeding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall sit as the Diet on that date and until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on the effective date of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

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No title - showing only the amendments by the House of Peers on 6 September, 1946) [Japanese and English]

A 295.1

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貴族院による修正箇所

(1) 第１５條第２項の次に下記を加へる。

Universal adult suffrage is hereby guaranteed with regard to the election of public officials.

(2) 第５９條第２項の次に下記を加へる。

The provision of the preceding paragragh does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

(3) 第６６條第１項の次に下記を加へる。

The Prime Minister and other Ministers of State shall be civilians.

(B) - J 7

House of Representatives Committee Amendments
Submitted to House and Passed [Japanese]

A 296.2

昭和二十一年十月六日回付
憲法改正第壹號

回（憲法改正）

帝國憲法改正案

右貴院ノ送付ニ係ル政府提出案本院ニ於テ修正議決セリ依テ議院法第五十五條ニ依リ及回付候也

昭和二十一年十月六日

貴族院議長 公爵 徳川家正

衆議院議長 山崎 猛 殿

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（小字及び――は貴族院修正）

日本國憲法

日本國民は、正當に選擧された國會における代表者を通じて行動し、われらとわれらの子孫のために、諸國民との協和による成果と、わが國全土にわたつて自由のもたらす恵澤を確保し、政府の行爲（行動）によつて再び戰爭の慘禍が起ること（發生しないやうにすることを決意し、ここに主權が國民に存することを宣言し、この憲法を確定する。そもそも國政は、國民の嚴肅（崇高）な信託によるものであつて、その權威は國民に由來し、その權力は國民の代表者がこれを行使し、その福利は國民がこれを享受する。ものである。これは人類普遍の原理であ

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Kades Papers, Part A,
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り、この憲法は、かかる原理に基く。われらは、これに反する一切の憲法、法令及び詔勅を排除する。

日本國民は、恒久の平和を念願し、人間相互の關係を支配する崇高な理想を深く自覺するものであって、われらの安全と生存をあげて、平和を愛する世界の諸國民の公正と信義に信頼して、われらの安全と生存を保持しようと決意した。われらは、平和を維持し、專制と隷從、壓迫と偏狹を地上から永遠に除去しようと努めてゐる國際社會に於いて、名譽ある地位を占めたいと思ふ。われらは、全世界の國民が、ひとしく恐怖と缺乏から免かれ、平和のうちに生存する權利を有することを確認する。

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われらは、いづれの國家も、自國のことのみに專念して他國を無視してはならないのであつて、政治道徳の法則は、普遍的なものであると信ずる。この法則に從ふことは、自國の主權を維持し、他國と對等關係に立たうとする各國の責務であると信ずる。

日本國民は、國家の名譽にかけ、全力をあげてこの崇高遠大な理想と目的を達成することを誓ふ。

Kades Papers, Part A,
Item no. 7(B)-J, pp. 4-5

第十五條　公務員を選定し、及びこれを罷免することは、國民固有の權利である。

すべて公務員は、全體の奉仕者であつて、一部の奉仕者ではない。

公務員の選擧については、成年者による普通選擧を保障する。

すべて選擧における投票の秘密は、これを侵してはならない。選擧人は、その選擇に關し公的にも私的にも責任を問はれない。

第五十九條　法律案は、この憲法に特別の定のある場合を除いては、兩議院で可決したとき法律となる。

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衆議院で可決し、参議院でこれと異なった議決をした法律案は、衆議院で出席議員の三分の二以上の多数で再び可決したときは、法律となる。

前項の規定は、法律の定めるところにより、衆議院が、両議院の協議會を開くことを求めることを妨げない。

参議院が、衆議院の可決した法律案を受け取った後、國會休會中の期間を除いて六十日以内に、議決しないときは、衆議院は、参議院がその法律案を否決したものとみなすことができる。

第六十六條　内閣は、法律の定めるところにより、その首長

たる内閣總理大臣及びその他の國務大臣でこれを組織する。

内閣總理大臣その他の國務大臣は、文民でなければならない。

内閣は、行政權の行使について、國會に對し連帶して責任を負ふ。

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The Constitution of Japan
(Passed by the Diet as Constitution on
7 September, 1946 and promulgated on
3 November, 1946. [Japanese]

A 303.1

日本國憲法

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日本國憲法

日本國民は、正當に選擧された國會における代表者を通じて行動し、われらとわれらの子孫のために、諸國民との協和による成果と、わが國全土にわたつて自由のもたらす惠澤を確保し、政府の行爲によつて再び戰爭の慘禍が起ることのないやうにすることを決意し、ここに主權が國民に存することを宣言し、この憲法を確定する。そもそも國政は、國民の嚴肅な信託によるものであつて、その權威は國民に由來し、その權力は國民の代表者がこれを行使し、その福利は國民がこれを享受する。これは人類普遍の原理であり、この憲法は、かかる原理に基くものである。われらは、これに反する一切の憲法、法令及び詔勅を排除する。

日本國民は、恒久の平和を念願し、人間相互の關係を支配する崇高な理想を深く自覺するのであつて、平和を愛する諸國民の公正と信義に信賴して、われらの安全と生存を保持しようと

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決意した。われらは、平和を維持し、專制と隷從、壓迫と偏狹を地上から永遠に除去しようと努めてゐる國際社會において、名譽ある地位を占めたいと思ふ。われらは、全世界の國民が、ひとしく恐怖と缺乏から免かれ、平和のうちに生存する權利を有することを確認する。

われらは、いづれの國家も、自國のことのみに專念して他國を無視してはならないのであつて、政治道德の法則は、普遍的なものであり、この法則に從ふことは、自國の主權を維持し、他國と對等關係に立たうとする各國の責務であると信ずる。

日本國民は、國家の名譽にかけ、全力をあげてこの崇高な理想と目的を達成することを誓ふ。

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第一章　天皇

第一條　天皇は、日本國の象徴であり日本國民統合の象徴であつて、この地位は、主權の存する日本國民の總意に基く。

第二條　皇位は、世襲のものであつて、國會の議決した皇室典範の定めるところにより、これを繼承する。

第三條　天皇の國事に關するすべての行爲には、內閣の助言と承認を必要とし、內閣が、その責任を負ふ。

第四條　天皇は、この憲法の定める國事に關する行爲のみを行ひ、國政に關する權能を有しない。

天皇は、法律の定めるところにより、その國事に關する行爲を委任することができる。

第五條　皇室典範の定めるところにより攝政を置くときは、攝政は、天皇の名でその國事に關

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する行爲を行ふ。この場合には、前條第一項の規定を準用する。

第六條　天皇は、國會の指名に基いて、内閣總理大臣を任命する。

天皇は、内閣の指名に基いて、最高裁判所の長たる裁判官を任命する。

第七條　天皇は、内閣の助言と承認により、國民のために、左の國事に關する行爲を行ふ。

一　憲法改正、法律、政令及び條約を公布すること。

二　國會を召集すること。

三　衆議院を解散すること。

四　國會議員の總選擧の施行を公示すること。

五　國務大臣及び法律の定めるその他の官吏の任免並びに全權委任狀及び大使及び公使の信任狀を認證すること。

六　大赦、特赦、減刑、刑の執行の免除及び復權を認證すること。

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七　榮典を授與すること。

八　批准書及び法律の定めるその他の外交文書を認證すること。

九　外國の大使及び公使を接受すること。

十　儀式を行ふこと。

第八條　皇室に財産を讓り渡し、又は皇室が、財産を讓り受け、若しくは賜與することは、國會の議決に基かなければならない。

第二章　戰爭の放棄

第九條　日本國民は、正義と秩序を基調とする國際平和を誠實に希求し、國權の發動たる戰爭と、武力による威嚇又は武力の行使は、國際紛爭を解決する手段としては、永久にこれを放棄する。

前項の目的を達するため、陸海空軍その他の戰力は、これを保持しない。國の交戰權は、こ

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れを認めない。

第三章　國民の權利及び義務

第十條　日本國民たる要件は、法律でこれを定める。

第十一條　國民は、すべての基本的人權の享有を妨げられない。この憲法が國民に保障する基本的人權は、侵すことのできない永久の權利として、現在及び將來の國民に與へられる。

第十二條　この憲法が國民に保障する自由及び權利は、國民の不斷の努力によつて、これを保持しなければならない。又、國民は、これを濫用してはならないのであつて、常に公共の福祉のためにこれを利用する責任を負ふ。

第十三條　すべて國民は、個人として尊重される。生命、自由及び幸福追求に對する國民の權利については、公共の福祉に反しない限り、立法その他の國政の上で、最大の尊重を必要とする。

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第十四條　すべて國民は、法の下に平等であつて、人種、信條、性別、社會的身分又は門地により、政治的、經濟的又は社會的關係において、差別されない。

華族その他の貴族の制度は、これを認めない。

榮譽、勳章その他の榮典の授與は、いかなる特權も伴はない。榮典の授與は、現にこれを有し、又は將來これを受ける者の一代に限り、その效力を有する。

第十五條　公務員を選定し、及びこれを罷免することは、國民固有の權利である。

すべて公務員は、全體の奉仕者であつて、一部の奉仕者ではない。

公務員の選擧については、成年者による普通選擧を保障する。

すべて選擧における投票の秘密は、これを侵してはならない。選擧人は、その選擇に關し公的にも私的にも責任を問はれない。

第十六條　何人も、損害の救濟、公務員の罷免、法律、命令又は規則の制定、廢止又は改正その

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他の事項に關し、平穏に請願する權利を有し、何人も、かかる請願をしたためにいかなる差別待遇も受けない。

第十七條　何人も、公務員の不法行爲により、損害を受けたときは、法律の定めるところにより、國又は公共團體に、その賠償を求めることができる。

第十八條　何人も、いかなる奴隷的拘束も受けない。又、犯罪に因る處罰の場合を除いては、その意に反する苦役に服させられない。

第十九條　思想及び良心の自由は、これを侵してはならない。

第二十條　信教の自由は、何人に對してもこれを保障する。いかなる宗教團體も、國から特權を受け、又は政治上の權力を行使してはならない。

何人も、宗教上の行爲、祝典、儀式又は行事に參加することを強制されない。

國及びその機關は、宗教教育その他いかなる宗教的活動もしてはならない。

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第二十一條　集會、結社及び言論、出版その他一切の表現の自由は、これを保障する。

檢閲は、これをしてはならない。通信の祕密は、これを侵してはならない。

第二十二條　何人も、公共の福祉に反しない限り、居住、移轉及び職業選擇の自由を有する。

何人も、外國に移住し、又は國籍を離脫する自由を侵されない。

第二十三條　學問の自由は、これを保障する。

第二十四條　婚姻は、兩性の合意のみに基いて成立し、夫婦が同等の權利を有することを基本として、相互の協力により、維持されなければならない。

配偶者の選擇、財產權、相續、住居の選定、離婚竝びに婚姻及び家族に關するその他の事項に關しては、法律は、個人の尊嚴と兩性の本質的平等に立脚して、制定されなければならない。

第二十五條　すべて國民は、健康で文化的な最低限度の生活を營む權利を有する。

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國は、すべての生活部面について、社會福祉、社會保障及び公衆衛生の向上及び増進に努めなければならない。

第二十六條　すべて國民は、法律の定めるところにより、その能力に應じて、ひとしく教育を受ける權利を有する。

すべて國民は、法律の定めるところにより、その保護する子女に普通教育を受けさせる義務を負ふ。義務教育は、これを無償とする。

第二十七條　すべて國民は、勤勞の權利を有し、義務を負ふ。

賃金、就業時間、休息その他の勤勞條件に關する基準は、法律でこれを定める。

兒童は、これを酷使してはならない。

第二十八條　勤勞者の團結する權利及び團體交渉その他の團體行動をする權利は、これを保障する。

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第二十九條　財産權は、これを侵してはならない。

財産權の內容は、公共の福祉に適合するやうに、法律でこれを定める。

私有財産は、正當な補償の下に、これを公共のために用ひることができる。

第三十條　國民は、法律の定めるところにより、納稅の義務を負ふ。

第三十一條　何人も、法律の定める手續によらなければ、その生命若しくは自由を奪はれ、又はその他の刑罰を科せられない。

第三十二條　何人も、裁判所において裁判を受ける權利を奪はれない。

第三十三條　何人も、現行犯として逮捕される場合を除いては、權限を有する司法官憲が發し、且つ理由となつてゐる犯罪を明示する令狀によらなければ、逮捕されない。

第三十四條　何人も、理由を直ちに告げられ、且つ、直ちに辯護人に依頼する權利を與へられなければ、抑留又は拘禁されない。又、何人も、正當な理由がなければ、拘禁されず、要求があ

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れば、その理由は、直ちに本人及びその辯護人の出席する公開の法廷で示されなければならない。

第三十五條　何人も、その住居、書類及び所持品について、侵入、捜索及び押收を受けることのない權利は、第三十三條の場合を除いては、正當な理由に基いて發せられ、且つ捜索する場所及び押收する物を明示する令狀がなければ、侵されない。

捜索又は押收は、權限を有する司法官憲が發する各別の令狀により、これを行ふ。

第三十六條　公務員による拷問及び殘虐な刑罰は、絶對にこれを禁ずる。

第三十七條　すべて刑事事件においては、被告人は、公平な裁判所の迅速な公開裁判を受ける權利を有する。

刑事被告人は、すべての證人に對して審問する機會を充分に與へられ、又、公費で自己のために強制的手續により證人を求める權利を有する。

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刑事被告人は、いかなる場合にも、資格を有する辯護人を依頼することができる。被告人が自らこれを依頼することができないときは、國でこれを附する。

第三十八條　何人も、自己に不利益な供述を強要されない。

強制、拷問若しくは脅迫による自白又は不當に長く抑留若しくは拘禁された後の自白は、これを證據とすることができない。

何人も、自己に不利益な唯一の證據が本人の自白である場合には、有罪とされ、又は刑罰を科せられない。

第三十九條　何人も、實行の時に適法であつた行爲又は既に無罪とされた行爲については、刑事上の責任を問はれない。又、同一の犯罪について、重ねて刑事上の責任を問はれない。

第四十條　何人も、抑留又は拘禁された後、無罪の裁判を受けたときは、法律の定めるところにより、國にその補償を求めることができる。

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第四章　國會

第四十一條　國會は、國權の最高機關であつて、國の唯一の立法機關である。

第四十二條　國會は、衆議院及び參議院の兩議院でこれを構成する。

第四十三條　兩議院は、全國民を代表する選舉された議員でこれを組織する。

兩議院の議員の定數は、法律でこれを定める。

第四十四條　兩議院の議員及びその選舉人の資格は、法律でこれを定める。但し、人種、信條、性別、社會的身分、門地、教育、財産又は收入によつて差別してはならない。

第四十五條　衆議院議員の任期は、四年とする。但し、衆議院解散の場合には、その期間滿了前に終了する。

第四十六條　參議院議員の任期は、六年とし、三年ごとに議員の半數を改選する。

第四十七條　選舉區、投票の方法その他兩議院の議員の選舉に關する事項は、法律でこれを定

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める。

第四十八條　何人も、同時に兩議院の議員たることはできない。

第四十九條　兩議院の議員は、法律の定めるところにより、國庫から相當額の歲費を受ける。

第五十條　兩議院の議員は、法律の定める場合を除いては、國會の會期中逮捕されず、會期前に逮捕された議員は、その議院の要求があれば、會期中これを釋放しなければならない。

第五十一條　兩議院の議員は、議院で行つた演說、討論又は表決について、院外で責任を問はれない。

第五十二條　國會の常會は、毎年一回これを召集する。

第五十三條　內閣は、國會の臨時會の召集を決定することができる。いづれかの議院の總議員の四分の一以上の要求があれば、內閣は、その召集を決定しなければならない。

第五十四條　衆議院が解散されたときは、解散の日から四十日以內に、衆議院議員の總選擧を

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行ひ、その選擧の日から三十日以内に、國會を召集しなければならない。

衆議院が解散されたときは、參議院は、同時に閉會となる。但し、内閣は、國に緊急の必要があるときは、參議院の緊急集會を求めることができる。

前項但書の緊急集會において採られた措置は、臨時のものであつて、次の國會開會の後十日以内に、衆議院の同意がない場合には、その效力を失ふ。

第五十五條　兩議院は、各、その議員の資格に關する爭訟を裁判する。但し、議員の議席を失はせるには、出席議員の三分の二以上の多數による議決を必要とする。

第五十六條　兩議院は、各、その總議員の三分の一以上の出席がなければ、議事を開き議決することができない。

兩議院の議事は、この憲法に特別の定のある場合を除いては、出席議員の過半數でこれを決し、可否同數のときは、議長の決するところによる。

第五十七條　兩議院の會議は、公開とする。但し、出席議員の三分の二以上の多數で議決したときは、祕密會を開くことができる。

兩議院は、各、その會議の記錄を保存し、祕密會の記錄の中で特に祕密を要すると認められるもの以外は、これを公表し、且つ一般に頒布しなければならない。

出席議員の五分の一以上の要求があれば、各議員の表決は、これを會議錄に記載しなければならない。

第五十八條　兩議院は、各、その議長その他の役員を選任する。

兩議院は、各、その會議その他の手續及び內部の規律に關する規則を定め、又、院內の秩序をみだした議員を懲罰することができる。但し、議員を除名するには、出席議員の三分の二以上の多數による議決を必要とする。

第五十九條　法律案は、この憲法に特別の定のある場合を除いては、兩議院で可決したとき法

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律となる。

衆議院で可決し、參議院でこれと異なつた議決をした法律案は、衆議院で出席議員の三分の二以上の多數で再び可決したときは、法律となる。

前項の規定は、法律の定めるところにより、衆議院が、兩議院の協議會を開くことを求めることを妨げない。

參議院が、衆議院の可決した法律案を受け取つた後、國會休會中の期間を除いて六十日以内に、議決しないときは、衆議院は、參議院がその法律案を否決したものとみなすことができる。

第六十條　豫算は、さきに衆議院に提出しなければならない。

豫算について、參議院で衆議院と異なつた議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は參議院が、衆議院の可決した豫

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算を受け取つた後、國會休會中の期間を除いて三十日以内に、議決しないときは、衆議院の議決を國會の議決とする。

第六十一條　條約の締結に必要な國會の承認については、前條第二項の規定を準用する。

第六十二條　兩議院は、各、國政に關する調査を行ひ、これに關して、證人の出頭及び證言並びに記錄の提出を要求することができる。

第六十三條　内閣總理大臣その他の國務大臣は、兩議院の一に議席を有すると有しないとにかかはらず、何時でも議案について發言するため議院に出席することができる。又、答辯又は說明のため出席を求められたときは、出席しなければならない。

第六十四條　國會は、罷免の訴追を受けた裁判官を裁判するため、兩議院の議員で組織する彈劾裁判所を設ける。

彈劾に關する事項は、法律でこれを定める。

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第五章　内閣

第六十五條　行政權は、内閣に屬する。

第六十六條　内閣は、法律の定めるところにより、その首長たる内閣總理大臣及びその他の國務大臣でこれを組織する。

内閣總理大臣その他の國務大臣は、文民でなければならない。

内閣は、行政權の行使について、國會に對し連帶して責任を負ふ。

第六十七條　内閣總理大臣は、國會議員の中から國會の議決で、これを指名する。この指名は、他のすべての案件に先だつて、これを行ふ。

衆議院と參議院とが異なつた指名の議決をした場合に、法律の定めるところにより、兩議院の協議會を開いても意見が一致しないとき、又は衆議院が指名の議決をした後、國會休會中の期間を除いて十日以内に、參議院が、指名の議決をしないときは、衆議院の議決を國會

の議決とする。

第六十八條　内閣總理大臣は、國務大臣を任命する。但し、その過半數は、國會議員の中から選ばれなければならない。

内閣總理大臣は、任意に國務大臣を罷免することができる。

第六十九條　内閣は、衆議院で不信任の決議案を可決し、又は信任の決議案を否決したときは、十日以内に衆議院が解散されない限り、總辭職をしなければならない。

第七十條　内閣總理大臣が缺けたとき、又は衆議院議員總選擧の後に初めて國會の召集があつたときは、内閣は、總辭職をしなければならない。

第七十一條　前二條の場合には、内閣は、あらたに内閣總理大臣が任命されるまで引き續きその職務を行ふ。

第七十二條　内閣總理大臣は、内閣を代表して議案を國會に提出し、一般國務及び外交關係に

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ついて國會に報告し、並びに行政各部を指揮監督する。

第七十三條　内閣は、他の一般行政事務の外、左の事務を行ふ。

一　法律を誠實に執行し、國務を總理すること。

二　外交關係を處理すること。

三　條約を締結すること。但し、事前に、時宜によつては事後に、國會の承認を經ることを必要とする。

四　法律の定める基準に從ひ、官吏に關する事務を掌理すること。

五　豫算を作成して國會に提出すること。

六　この憲法及び法律の規定を實施するために、政令を制定すること。但し、政令には、特にその法律の委任がある場合を除いては、罰則を設けることができない。

七　大赦、特赦、減刑、刑の執行の免除及び復權を決定すること。

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第七十四條　法律及び政令には、すべて主任の國務大臣が署名し、内閣總理大臣が連署することを必要とする。

第七十五條　國務大臣は、その在任中、内閣總理大臣の同意がなければ、訴追されない。但し、これがため、訴追の權利は、害されない。

第六章　司法

第七十六條　すべて司法權は、最高裁判所及び法律の定めるところにより設置する下級裁判所に屬する。

特別裁判所は、これを設置することができない。行政機關は、終審として裁判を行ふことができない。

すべて裁判官は、その良心に從ひ獨立してその職權を行ひ、この憲法及び法律にのみ拘束される。

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第七十七條　最高裁判所は、訴訟に關する手續、辯護士、裁判所の内部規律及び司法事務處理に關する事項について、規則を定める權限を有する。

檢察官は、最高裁判所の定める規則に從はなければならない。

最高裁判所は、下級裁判所に關する規則を定める權限を、下級裁判所に委任することができる。

第七十八條　裁判官は、裁判により、心身の故障のために職務を執ることができないと決定された場合を除いては、公の彈劾によらなければ罷免されない。裁判官の懲戒處分は、行政機關がこれを行ふことはできない。

第七十九條　最高裁判所は、その長たる裁判官及び法律の定める員數のその他の裁判官でこれを構成し、その長たる裁判官以外の裁判官は、内閣でこれを任命する。

最高裁判所の裁判官の任命は、その任命後初めて行はれる衆議院議員總選擧の際國民の

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審査に付し、その後十年を經過した後初めて行はれる衆議院議員總選擧の際更に審査に付し、その後も同樣とする。

前項の場合において、投票者の多數が裁判官の罷免を可とするときは、その裁判官は、罷免される。

審査に關する事項は、法律でこれを定める。

最高裁判所の裁判官は、法律の定める年齡に達した時に退官する。

最高裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第八十條　下級裁判所の裁判官は、最高裁判所の指名した者の名簿によつて、内閣でこれを任命する。その裁判官は、任期を十年とし、再任されることができる。但し、法律の定める年齡に達した時には退官する。

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下級裁判所の裁判官は、すべて定期に相當額の報酬を受ける。この報酬は、在任中、これを減額することができない。

第八十一條　最高裁判所は、一切の法律、命令、規則又は處分が憲法に適合するかしないかを決定する權限を有する終審裁判所である。

第八十二條　裁判の對審及び判決は、公開法廷でこれを行ふ。

裁判所が、裁判官の全員一致で、公の秩序又は善良の風俗を害する虞があると決した場合には、對審は、公開しないでこれを行ふことができる。但し、政治犯罪、出版に關する犯罪又はこの憲法第三章で保障する國民の權利が問題となつてゐる事件の對審は、常にこれを公開しなければならない。

第七章　財政

第八十三條　國の財政を處理する權限は、國會の議決に基いて、これを行使しなければならな

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い。

第八十四條　あらたに租稅を課し、又は現行の租稅を變更するには、法律又は法律の定める條件によることを必要とする。

第八十五條　國費を支出し、又は國が債務を負擔するには、國會の議決に基くことを必要とする。

第八十六條　內閣は、每會計年度の豫算を作成し、國會に提出して、その審議を受け議決を經なければならない。

第八十七條　豫見し難い豫算の不足に充てるため、國會の議決に基いて豫備費を設け、內閣の責任でこれを支出することができる。

すべて豫備費の支出については、內閣は、事後に國會の承諾を得なければならない。

第八十八條　すべて皇室財產は、國に屬する。すべて皇室の費用は、豫算に計上して國會の議

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決を經なければならない。

第八十九條　公金その他の公の財産は、宗教上の組織若しくは團體の使用、便益若しくは維持のため、又は公の支配に屬しない慈善、教育若しくは博愛の事業に對し、これを支出し、又はその利用に供してはならない。

第九十條　國の收入支出の決算は、すべて毎年會計檢査院がこれを檢査し、内閣は、次の年度に、その檢査報告とともに、これを國會に提出しなければならない。

會計檢査院の組織及び權限は、法律でこれを定める。

第九十一條　内閣は、國會及び國民に對し、定期に、少くとも毎年一回、國の財政狀況について報告しなければならない。

第八章　地方自治

第九十二條　地方公共團體の組織及び運營に關する事項は、地方自治の本旨に基いて、法律で

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これを定める。

第九十三條　地方公共團體には、法律の定めるところにより、その議事機關として議會を設置する。

地方公共團體の長、その議會の議員及び法律の定めるその他の吏員は、その地方公共團體の住民が、直接これを選擧する。

第九十四條　地方公共團體は、その財産を管理し、事務を處理し、及び行政を執行する權能を有し、法律の範圍内で條例を制定することができる。

第九十五條　一の地方公共團體のみに適用される特別法は、法律の定めるところにより、その地方公共團體の住民の投票においてその過半數の同意を得なければ、國會は、これを制定することができない。

第九章　改正

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第九十六條　この憲法の改正は、各議院の總議員の三分の二以上の贊成で、國會が、これを發議し、國民に提案してその承認を經なければならない。この承認には、特別の國民投票又は國會の定める選擧の際行はれる投票において、その過半數の贊成を必要とする。

憲法改正について前項の承認を經たときは、天皇は、國民の名で、この憲法と一體を成すものとして、直ちにこれを公布する。

第十章　最高法規

第九十七條　この憲法が日本國民に保障する基本的人權は、人類の多年にわたる自由獲得の努力の成果であつて、これらの權利は、過去幾多の試錬に堪へ、現在及び將來の國民に對し、侵すことのできない永久の權利として信託されたものである。

第九十八條　この憲法は、國の最高法規であつて、その條規に反する法律、命令、詔勅及び國務に關するその他の行爲の全部又は一部は、その效力を有しない。

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日本國が締結した條約及び確立された國際法規は、これを誠實に遵守することを必要とする。

第九十九條　天皇又は攝政及び國務大臣、國會議員、裁判官その他の公務員は、この憲法を尊重し擁護する義務を負ふ。

第十一章　補則

第百條　この憲法は、公布の日から起算して六箇月を經過した日から、これを施行する。

この憲法を施行するために必要な法律の制定、參議院議員の選擧及び國會召集の手續並びにこの憲法を施行するために必要な準備手續は、前項の期日よりも前に、これを行ふことができる。

第百一條　この憲法施行の際、參議院がまだ成立してゐないときは、その成立するまでの間、衆議院は、國會としての權限を行ふ。

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第百二條　この憲法による第一期の參議院議員のうち、その半數の者の任期は、これを三年とする。その議員は、法律の定めるところにより、これを定める。

第百三條　この憲法施行の際現に在職する國務大臣、衆議院議員及び裁判官並びにその他の公務員で、その地位に相應する地位がこの憲法で認められてゐる者は、法律で特別の定をした場合を除いては、この憲法施行のため、當然にはその地位を失ふことはない。但し、この憲法によつて、後任者が選擧又は任命されたときは、當然その地位を失ふ。

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The Constitution of Japan
(Passed by the Diet as Constitution on
7 September, 1946 and promulgated on
3 November, 1946

[Cabinet Secretariat
English Printing]

A 337.1

THE CONSTITUTION OF JAPAN

CABINET SECRETARIAT

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I rejoice that the foundation for the construction of a new Japan has been laid according to the will of the Japanese people, and hereby sanction and promulgate the amendments of the Imperial Japanese Constitution effected following the consultation with the Privy Council and the decision of the Imperial Diet made in accordance with Article 73 of the said Constitution.

Signed: HIROHITO, Seal of the Emperor

This third day of the eleventh month of the twenty-first year of Showa (November 3, 1946)

Countersigned :

Prime Minister and concurrently Minister for Foreign Affairs	YOSHIDA Shigeru
Minister of State	Baron SHIDEHARA Kijuro
Minister of Justice	KIMURA Tokutaro
Minister for Home Affairs	OMURA Seiichi
Minister of Education	TANAKA Kotaro
Minister of Agriculture and Forestry	WADA Hiroo
Minister of State	SAITO Takao
Minister of Communications	HITOTSUMATSU Sadayoshi
Minister of Commerce and Industry	HOSHIJIMA Niro
Minister of Welfare	KAWAI Yoshinari
Minister of State	UEHARA Etsujiro
Minister of Transportation	HIRATSUKA Tsunejiro
Minister of Finance	ISHIBASHI Tanzan
Minister of State	KANAMORI Tokujiro
Minister of State	ZEN Keinosuke

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The Constitution of Japan

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

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CHAPTER I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people :

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

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Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

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No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any group thereof.

Universal adult suffrage is guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

Standards for wages, hours, rest and other working conditions shall be fixed by law.

Children shall not be exploited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

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Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38. No person shall be compelled to testify against himself.

Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

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CHAPTER IV. THE DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of

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either House makes the demand, the Cabinet must determine on such convocation.

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more

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of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from among

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the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

Article 65. Executive power shall be vested in the Cabinet.

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister, representing the Cabinet, submits

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bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

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The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically imcompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights

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of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

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CHAPTER VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

CHAPTER X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

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Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER XI. SUPPLEMENTARY PROVISIONS

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

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The Constitution of Japan

Official Gazette
English Edition

Sunday, November 3, 1946

Japanese Government Printing Bureau

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OFFICIAL GAZETTE

ENGLISH EDITION

EXTRA

Sunday, November 3, 1946

THE CONSTITUTION OF JAPAN

GOVERNMENT PRINTING BUREAU

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I rejoice that the foundation for the construction of a new Japan has been laid according to the will of the Japanese people, and hereby sanction and promulgate the amendments of the Imperial Japanese Constitution effected following the consultation with the Privy Council and the decision of the Imperial Diet made in accordance with Article 73 of the said Constitution.

Signed: HIROHITO, Seal of the Emperor

This third day of the eleventh month of the twenty-first year of Showa (November 3, 1946)

Countersigned:

Prime Minister and concurrently Minister for Foreign Affairs	YOSHIDA Shigeru
Minister of State	Baron SHIDEHARA Kijuro
Minister of Justice	KIMURA Tokutaro
Minister for Home Affairs	OMURA Seiichi
Minister of Education	TANAKA Kotaro
Minister of Agriculture and Forestry	WADA Hiroo
Minister of State	SAITO Takao
Minister of Communications	HITOTSUMATSU Sadayoshi
Minister of Commerce and Industry	HOSHIJIMA Niro
Minister of Welfare	KAWAI Yoshinari
Minister of State	UEHARA Etsujiro
Minister of Transportation	HIRATSUKA Tsunejiro
Minister of Finance	ISHIBASHI Tanzan
Minister of State	KANAMORI Tokujiro
Minister of State	ZEN Keinosuke

The Constitution of Japan

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

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CHAPTER I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

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Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any group thereof.

Universal adult suffrage is guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters ; nor shall any person be in any way discriminated against for sponsoring such a petition.

Artiele 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

Standards for wages, hours, rest and other working conditions shall be fixed by law.

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Children shall not be exploited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38. No person shall be compelled to testify against himself.

Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

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Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

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The number of the members of each House shall be fixed by law.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be

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four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

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When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

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Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

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Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds

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or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

Article 65. Executive power shall be vested in the Cabinet.

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision

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over various administrative branches.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically imcompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate com-

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pensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article 91 At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon

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be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

CHAPTER X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER XI. SUPPLEMENTARY PROVISIONS

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials, who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

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DEPARTMENT OF STATE

PUBLICATION 2836

FAR EASTERN SERIES 22

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Foreword

THE Constitution of Japan was promulgated on November 3, 1946, and became effective on May 3, 1947. Having received the approval of the Japanese Diet, it is the basis of a new era in Japanese government.

Several unsuccessful attempts had been made since Japan's surrender to the Allied powers to revise the "Meiji" Constitution of 1889. Finally the first draft of the new Constitution was made public on March 6, 1946, and appeared in revised form as of April 22, 1946 (see Department of State publication 2671, Far Eastern Series 17, p. 117). The present Constitution is an outgrowth of that draft.

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I rejoice that the foundation for the construction of a new Japan has been laid according to the will of the Japanese people, and hereby sanction and promulgate the amendments of the Imperial Japanese Constitution effected following the consultation with the Privy Council and the decision of the Imperial Diet made in accordance with Article 73 of the said Constitution.

Signed: HIROHITO, Seal of the Emperor

This third day of the eleventh month of the twenty-first year of Showa (November 3, 1946)

Countersigned:

Prime Minister and concurrently Minister for Foreign Affairs	Yoshida Shigeru
Minister of State	Baron Shidehara Kijuro
Minister of Justice	Kimura Tokutaro
Minister for Home Affairs	Omura Seiichi
Minister of Education	Tanaka Kotaro
Minister of Agriculture and Forestry	Wada Hiroo
Minister of State	Saito Takao
Minister of Communications	Hitotsumatsu Sadayoshi
Minister of Commerce and Industry	Hoshijima Niro
Minister of Welfare	Kawai Yoshinari
Minister of State	Uehara Etsujiro
Minister of Transportation	Hiratsuka Tsunejiro
Minister of Finance	Ishibashi Tanzan
Minister of State	Kanamori Tokujiro
Minister of State	Zen Keinosuke

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The Constitution of Japan

WE, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

Chapter I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

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Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.
Convocation of the Diet.
Dissolution of the House of Representatives.
Proclamation of general election of members of the Diet.
Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.
Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.
Awarding of honors.
Attestation of instruments of ratification and other diplomatic documents as provided for by law.
Receiving foreign ambassadors and ministers.
Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

Chapter II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

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In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

Chapter III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any group thereof.

Universal adult suffrage is guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Artice 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

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Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

Standards for wages, hours, rest and other working conditions shall be fixed by law.

Children shall not be exploited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

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Article 29. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38. No person shall be compelled to testify against himself.

Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

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Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

Chapter IV. THE DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

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Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the

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House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

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Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint com-

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mittee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

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Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

Administer the civil service, in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall

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not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

Chapter VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

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The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

Chapter VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

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Chapter VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberate organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

Chapter IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

Chapter X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

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Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

Chapter XI. SUPPLEMENTARY PROVISIONS

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

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The Constitution of Japan

Matsumoto - Sato
Redraft of SCAP Draft in Japanese

(Basis of All Day/Night 4-5 March, 1946 Session
with Notes made at Session)

11

A 391.1

the original is missing

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The Constitution of Japan

Pre-First Government Draft Handed Japanese
13 February, 1946

12

A 392.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

13 February 1946

Received from Colonel Chas L. Kades fifteen (15) copies, numbered 6 to 20 (both inclusive) of draft Constitution of Japan.

A 393

Copy 31 of copies handed
Shrasin, fin'ds per receipt

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CONSTITUTION OF JAPAN

We, the Japanese People, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, ordinances, laws and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance, for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese People, pledge our national honor, determined will and full resources.

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CHAPTER I

The Emperor

Article I. The Emperor shall be the symbol of the State and of the Unity of the People, deriving his position from the sovereign will of the People, and from no other source.

Article II. Succession to the Imperial Throne shall be dynastic and in accordance with such Imperial House Law as the Diet may enact.

Article III. The advice and consent of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

The Emperor shall perform only such state functions as are provided for in this Constitution. He shall have no governmental powers, nor shall he assume nor be granted such powers.

The Emperor may delegate his functions in such manner as may be provided by law.

Article IV. When a regency is instituted in conformity with the provisions of such Imperial House Law as the Diet may enact, the duties of the Emperor shall be performed by the Regent in the name of the Emperor; and the limitations on the functions of the Emperor contained herein shall apply with equal force to the Regent.

Article V. The Emperor appoints as Prime Minister the person designated by the Diet.

Article VI. Acting only on the advice and with the consent of the Cabinet, the Emperor, on behalf of the people, shall perform the following state functions:

Affix his official seal to and proclaim all laws enacted by the Diet, all Cabinet orders, all amendments to

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this Constitution, and all treaties and international conventions;

Convoke sessions of the Diet;

Dissolve the Diet;

Proclaim general elections;

Attest the appointment or commission and resignation or dismissal of Ministers of State, ambassadors and those other state officials whose appointment or commission and resignation or dismissal may by law be attested in this manner;

Attest grants of amnesty, pardons, commutation of punishment, reprieves and rehabilitation;

Award honors;

Receive ambassadors and ministers of foreign States; and

Perform appropriate ceremonial functions.

Article VII No grants of money or other property shall be made to the Imperial Throne, and no expenditures shall be made by the Imperial Throne, unless authorized by the Diet.

CHAPTER II

Renunciation of War

Article VIII. War as a sovereign right of the nation is abolished. The threat or use of force is forever renounced as a means for settling disputes with any other nation.

No army, navy, air force, or other war potential will ever be authorized and no rights of belligerency will ever be conferred upon the State.

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CHAPTER III

Rights and Duties of the People

Article IX. The people of Japan are entitled to the enjoyment without interference of all fundamental human rights.

Article X. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article XI. The freedoms, rights and opportunities enunciated by this Constitution are maintained by the eternal vigilance of the people and involve an obligation on the part of the people to prevent their abuse and to employ them always for the common good.

Article XII. The feudal system of Japan shall cease. All Japanese by virtue of their humanity shall be respected as individuals. Their right to life, liberty and the pursuit of happiness within the limits of the general welfare shall be the supreme consideration of all law and of all governmental action.

Article XIII. All natural persons are equal before the law. No discrimination shall be authorized or tolerated in political, economic or social relations on account of race, creed, sex, social status, caste or national origin.

No patent of nobility shall from this time forth embody within itself any national or civic power of government.

No rights of peerage except those of the Imperial dynasty shall extend beyond the lives of those now in being.

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No special privilege shall accompany any award of honor, decoration or other distinction; nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people are the ultimate arbiters of their government and of the Imperial Throne. They have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special groups.

In all elections, secrecy of the ballot shall be kept inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of grievances for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. Aliens shall be entitled to the equal protection of law.

Article XVII. No person shall be held in enslavement, serfdom or bondage of any kind. Involuntary servitude, except as a punishment for crime, is prohibited.

Article XVIII. Freedom of thought and conscience shall be held inviolable.

Article XIX. Freedom of religion is guaranteed to all. No religious organization shall receive special privileges from the State, nor exercise political authority.

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No person shall be compelled to take part in any religious acts, celebrations, rites or practices.

The State and its organs shall refrain from religious education or any other religious activity.

Article XX. Freedom of assembly, speech and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XXI. Freedom of association, movement and choice of abode are guaranteed to every person to the extent they do not conflict with the general welfare.

All persons shall be free to emigrate and to change their nationality.

Article XXII. Academic freedom and choice of occupation are guaranteed.

Article XXIII. The family is the basis of human society and its traditions for good or evil permeate the nation. Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion, and maintained through cooperation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIV. In all spheres of life, laws shall be designed for the promotion and extension of social welfare, and of freedom, justice and democracy.

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Free, universal and compulsory education shall be established.

The exploitation of children shall be prohibited.

The public health shall be promoted.

Social security shall be provided.

Standards for working conditions, wages and hours shall be fixed.

Article XXV. All men have the right to work.

Article XXVI. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare.

Article XXVIII. The ultimate fee to the land and to all natural resources reposes in the State as the collective representative of the people. Land and other natural resources are subject to the right of the State to take them, upon just compensation therefor, for the purpose of securing and promoting the conservation, development, utilization and control thereof.

Article XXIX. Ownership of property imposes obligations. Its use shall be in the public good. Private property may be taken by the State for public use upon just compensation therefor.

Article XXX. No person shall be apprehended except upon warrant issued by a competent officer of a court of law specifying the offense upon which the person is charged, unless he is apprehended while committing a crime.

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Article XXXI. No person shall be arrested or detained without being at once informed of the charges against him nor without the immediate privilege of counsel; he shall not be held incommunicado; he shall not be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXII. No person shall be deprived of life or liberty, nor shall any criminal penalty be imposed, except according to procedures established by the Diet, nor shall any person be denied the right of appeal to the courts.

Article XXXIII. The right of the people to be secure in their persons, homes, papers and effects against entries, searches and seizures shall not be impaired except upon judicial warrant issued only for probable cause, and particularly describing the place to be searched and the person or things to be seized.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent officer of a court of law.

Article XXXIV. The infliction of torture by any public officer is absolutely forbidden.

Article XXXV. Excessive bail shall not be required, nor cruel or unusual punishments inflicted.

Article XXXVI. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to cross-examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

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At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article XXXVII. No person shall be declared guilty of a crime except by a court of competent jurisdiction.

No person shall be twice placed in jeopardy for the same offense.

Article XXXVIII. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXIX. No person shall be held criminally liable for an act lawful at the time it was committed.

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CHAPTER IV

The Diet

Article XL. The Diet shall be the highest organ of state power and shall be the sole law-making authority of the State.

Article XLI. The Diet shall consist of one House of elected representatives with a membership of not less than 300 nor more than 500.

Article XLII. The qualifications of electors and of candidates for election to the Diet shall be determined by law, and in determining such qualifications there shall be no discrimination because of sex, race, creed, color or social status.

Article XLIII. Members of the Diet shall receive adequate compensation from the national treasury as determined by law.

Article XLIV. Members of the Diet shall in all cases, except those specified by law, be free from arrest while attending the sessions of the Diet or while travelling to and from such sessions; and for any speech, debate, or vote in the Diet, they shall not be held legally liable elsewhere.

Article XLV. The term of the members shall be four years, but it may be terminated at an earlier date by dissolution of the Diet as provided herein.

Article XLVI. The method of election, apportionment, and voting shall be determined by law.

Article XLVII. The Diet shall convene at least once in every year.

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Article XLVIII. The Cabinet may call special sessions and shall do so on petition of not less than twenty per cent of the members of the Diet.

Article XLVIX. The Diet shall be the sole judge of the elections and the qualifications of its members. The denial of a seat to anyone who is certified to have been elected and whose right to the seat has been questioned shall require the vote of a majority of the members present.

Article L. A quorum to transact business shall consist of not less than one-third of all the members. Except as otherwise provided herein all actions of the Diet shall be by majority vote of those present. In case of a tie the presiding officer shall cast the deciding vote.

Article LI. The Diet shall choose its presiding officer and other officials. It may determine the rules of its proceedings, punish members for disorderly behavior and expel them. On a motion for expulsion of a member a vote of not less than two-thirds of the members present shall be required to effect such expulsion.

Article LII. No law shall be passed except by bill.

Article LIII. The deliberations of the Diet shall be public, and no secret sessions shall be held. The Diet shall maintain and publish a record of its proceedings and this record shall be made available to the public. The individual votes of members on any question shall be recorded in the journal upon the demand of twenty per cent of those present.

Article LIV. The Diet shall have the power to conduct investigations, to compel the attendance and testimony of withesses and the production of records, and to punish for refusal to comply.

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Article LV. The Diet by a majority vote of those present shall designate the Prime Minister. The designation of a Prime Minister shall take precedence over all other business of the Diet.

The Diet shall establish the several Ministries of State.

Article LVI. The Prime Minister and the Ministers of State whether or not they hold seats in the Diet may at any time appear before that body for the purpose of presenting and arguing bills, and shall appear when required to answer interpellations.

Article LVII. Within ten days after the passage of a resolution of non-confidence or the failure to pass a resolution of confidence by a majority of the total membership of the Diet, the Cabinet shall resign or order the Diet to dissolve. When the Diet has been ordered dissolved a special election of a new Diet shall be held not less than thirty days nor more than forty days after the date of dissolution. The newly elected Diet shall be convoked within thirty days after the date of election.

Article LVIII. The Diet shall constitute from among its members a court of impeachment to try members of the judiciary against whom removal proceedings have been instituted.

Article LIX. The Diet shall enact all laws necessary and proper to carry into execution the provisions of this Constitution.

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CHAPTER V

The Cabinet

Article LX. The executive power is vested in a Cabinet.

Article LXI. The Cabinet consists of a Prime Minister, who is its head, and such other Ministers of State as may be authorized by the Diet.

In the exercise of the executive power, the Cabinet is collectively responsible to the Diet.

Article LXII. The Prime Minister shall with the advice and consent of the Diet appoint Ministers of State.

The Prime Minister may remove individual Ministers at will.

Article LXIII. Whenever a vacancy occurs in the office of Prime Minister or upon the convening of a new Diet, the Cabinet shall collectively resign and a new Prime Minister shall be designated.

Pending such designation, the Cabinet shall continue to perform its duties.

Article LXIV. The Prime Minister introduces bills on behalf of the Cabinet, reports to the Diet on general affairs of State and the status of foreign relations, and exercises control and supervision over the several executive departments and agencies.

Article LXV. In addition to other executive responsibilities, the Cabinet shall:

Faithfully execute the laws and administer the affairs of State;

Conduct foreign relations;

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Conclude such treaties, international conventions and agreements with the consent of the Diet by prior authorization or subsequent ratification as it deems in the public interest;

Administer the civil service according to standards established by the Diet;

Prepare and submit to the Diet an annual budget;

Issue orders and regulations to carry out the provisions of this Constitution and the law, but no such order or regulation shall contain a penal provision; and

Grant amnesty, pardon, commutation of punishment, reprieve and rehabilitation.

Article LXVI. The competent Minister of State shall sign and the Prime Minister shall countersign all acts of the Diet and executive orders.

Article LXVII. Cabinet Ministers shall not be subject to judicial process during their tenure of office without the consent of the Prime Minister, but no right of action shall be impaired by reason hereof.

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CHAPTER VI

Judiciary.

Article LXVIII. A strong and independent judiciary being the bulwark of the people's rights, the whole judicial power is vested in a Supreme Court and in such inferior courts as the Diet shall from time to time establish.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXIX. The Supreme Court is vested with the rule-making power under which it determines the rules of practice and of procedure, the admission of attorneys, the internal discipline of the courts, the administration of judicial affairs, and such other matters as may properly affect the free exercise of the judicial power.

Public procurators shall be officers of the court and subject to its rule-making power.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXX. Removals of judges shall be accomplished by public impeachment only and no disciplinary action shall be administered them by any executive organ or agency.

Article LXXI. The Supreme Court shall consist of a chief justice and such number of associate justices as may be determined by the Diet. All such justices shall be appointed by the Cabinet and shall hold office during good behavior but not after the attainment of the age of 70 years, provided however that all such appointments shall be reviewed at the first general election held

election held immediately following the expiration of ten calendar years from the next prior confirmation. Upon a majority vote of the electorate not to retain the incumbent the office shall become vacant.

All such justices shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXII. The judges of the inferior courts shall be appointed by the Cabinet from a list which for each vacancy shall contain the names of at least two persons nominated by the Supreme Court. All such justices shall hold office for a term of ten years with privilege of reappointment and shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office. No judge shall hold office after attaining the age of 70 years.

Article LXXIII. The Supreme Court is the court of last resort. Where the determination of the constitutionality of any law, order, regulation or official act is in question, the judgment of the Supreme Court in all cases arising under or involving Chapter III of this Constitution is final; in all other cases where determination of the constitutionality of any law, ordinance, regulation or official act is in question, the judgment of the Court is subject to review by the Diet.

A judgment of the Supreme Court which is subject to review may be set aside only by the concurring vote of two-thirds of the whole number of representatives of the Diet. The Diet shall establish rules of procedure for reviewing decisions of the Supreme Court.

Article LXXIV. In all cases affecting ambassadors, ministers and consuls of foreign states, the Supreme Court has exclusive original jurisdiction.

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Article LXXV. Trials shall be conducted and judgment declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses of the press, and cases wherein the rights of citizens as reserved in Chapter III of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER VII

Finance

Article LXXVI. The power to levy taxes, borrow money, appropriate funds, issue and regulate the value of coins and currency shall be exercised through the Diet.

Article LXXVII. No new taxes shall be imposed or existing ones modified except by action of the Diet or under such conditions as the Diet may prescribe.

All taxes in effect at the time this Constitution is promulgated shall continue to be collected under existing regulations until changed or modified by the Diet.

Article LXXVIII. No contract shall be entered into in the absence of an appropriation therefor, nor shall the credit of the State be pledged except as authorized by the Diet.

Article LXXIX. The Cabinet shall prepare and submit to the Diet an annual budget setting forth the complete government fiscal program for the next ensuing fiscal year, including all proposed expenditures, anticipated revenues and borrowings.

Article LXXX. The Diet may disapprove, reduce, increase or reject any item in the budget or add new items.

The Diet shall appropriate no money for any fiscal year in excess of the anticipated income for that period, including

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the proceeds of any borrowings.

Article LXXXI. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized to be expended under the direct supervision of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXII. All property of the Imperial Household, other than the hereditary estates, shall belong to the nation. The income from all Imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXIII. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of the State.

Article LXXXIV. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be determined by the Diet.

Article LXXXV. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of public finances.

CHAPTER VIII

Local Government

Article LXXXVI. The governors of prefectures, the mayors of cities and towns and the chief executive officers of all other subordinate bodies politic and corporate

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having taxing power, the members of prefectural and local legislative assemblies, and such other prefectural and local officials as the Diet may determine, shall be elected by direct popular vote within their several communities.

Article LXXXVII. The inhabitants of metropolitan areas, cities and towns shall be secure in their right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article LXXXVIII. The Diet shall pass no local or special act applicable to a metropolitan area, city or town where a general act can be made applicable, unless it be made subject to the acceptance of a majority of the electorate of such community.

CHAPTER IX

Amendments

Article LXXXIX. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all its members, and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor, in the name of the People, as an integral part of this Constitution.

CHAPTER X

Supreme Law

Article XC. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the nation, and no public law or ordinance and no imperial rescript or other governmental act, or part thereof, contrary to the provisions hereof shall have legal force or validity.

Article XCI. The Emperor, upon succeeding to the Throne, and the Regent, Ministers of State, Members of the Diet, Members of the Judiciary and all other public officers upon assuming office, shall be bound to uphold and protect this Constitution.

All public officials duly holding office when this Constitution takes effect shall likewise be so bound and shall remain in office until their successors are elected or appointed.

CHAPTER XI

Ratification

Article XCII. This Constitution shall be established when ratified by the Diet by roll-call vote of two-thirds of the members present.

Upon ratification by the Diet, the Emperor shall immediately proclaim, in the name of the People, that this Constitution has been established as the supreme law of the nation.

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Check sheet dated 18 Jan 46 attaching minutes of conference with FEC held 17 Jan 46.

Minutes of conference with Far Eastern Commission held 17 Jan 46.

Govt Sec (C.W.) C-in-C 18 Jan 46

For your information, I am attaching an extract from the minutes of the conference held yesterday with the Far Eastern Commission by the Government Section. The extract covers the questions asked by members of the Commission and the answers made with reference to the revision of the Japanese constitution.

C.W.

Incl:
As indicated.

6

EXTRACT FROM MINUTES OF CONFERENCE WITH FAR EASTERN COMMISSION ON 17 JANUARY 1946.

Q. Mr. Tomas Confesor: Are you considering amendments to the Constitution?

A. Col. Kades: No. The Government Section has understood that that is a long range problem concerning fundamental changes in the Japanese constitutional structure which is within the province of your Commission.

Q. Mr. Tomas Confesor: At the opening session of the Commission, we were given to understand by the Headquarters spokesman that your section was studying the Constitution. Is that wrong?

A. Col. Kades: There must have been some misunderstanding on your part. The Government Section advises the Supreme Commander on policies pertaining to the internal structure of civil government in Japan for the purpose of carrying out the basic directive issued by the United States Chiefs of Staff for the initial phases of the occupation. It has not considered the Constitution as a part of its work. I have thought that the Constitution was within the terms of reference of your Commission.

Q. Mr. Tomas Confesor: Isn't it so that the changes being effected in the Japanese way of life by the Supreme Commander will have to be embodied in the Japanese Constitution, thereby requiring the Constitution to be revised. For example, should not the abolition of the office of the Lord Keeper of the Privy Seal and the transfer of its functions be incorporated in the Constitution?

A. Col. Kades: In Japan you cannot turn to the written Constitution for everything you may wish to know about the governmental system. The written Constitution is important in understanding the Japanese Constitutional system. But the actual working Constitution in Japan is a constantly changing complex of principles, usages, statutory elaborations, executive supplements and extra constitutional bodies. These changes occur from day to day. Some of them are taken on the initiative of the Japanese Government, such as the abolition of the office of the Lord Keeper of the Privy Seal. They are effective now. Whether the written Constitution requires amendment to make the change permanent is a question I am not prepared to answer since we have not studied the Japanese Constitution from the standpoint of making such revisions.

Q. Mr. Tomas Confesor: Does the present Constitution embody democratic changes made by the Supreme Commander?

A. Col. Kades: The written Constitution does not embody these changes, but the constitutional process has been affected and accelerated by directives issued by General MacArthur, and by rulings he has made on proposals submitted by the Japanese Government such as, for example, the abolition of the Regional Governments-General.

Q. Mr. Tomas Confesor: I do not understand then why constitutional revision is not part of your work.

A. Col. Kades: Because revision of the formal document constituting a fundamental change in the Japanese constitutional structure is part of the Commission's work.

Q. General McCoy: Is anyone else studying the Constitution?

A. Col. Kades: I understand that various groups in Japan are studying the Constitution including citizen groups as well, possibly, as governmental committees.

Q. Gen. McCoy: This Commission has heard a lot of gossip; for example, with reference to the unfortunate Konoye incident, it has heard that General MacArthur asked the Prince to make a study of administrative changes in the Japanese Government and that, due to a difficulty in interpretation, Konoye thought that General MacArthur said "constitutional changes". Have you heard that story?

A. Col. Kades: No, General, the Commission hears more strange gossip than we do. I have never heard of such an incident.

Q. Sir George Sansom: From what you have said about changes taking place in the Japanese Government, I gather that the system is not unlike the way we have it in the United Kingdom. Is that right?

A. Col. Kades: It is partially true. Unlike the British system, the Japanese do have a written document. However, if one sets out to determine the full sweep of constitutional arrangements under which the Japanese people live and work, the written Constitution will not carry him very far. The day-to-day operations of the Government constitute an integral part of the fundamental law in Japan; not only operating branches of the Government, but also instrumentalities like political parties which function outside of the Government itself are part of the Japanese constitutional system.

Q. Mr. Tomas Confesor: I do not understand how you can amend the Con stitution without having a written document.

A. Col. Kades: We do not amend the Constitution. The Government Section is a staff section to advise the Supreme Commander and, in the course of its functioning, it makes recommendations concerning various aspects of government in Japan.

Directives issued on the basis of these recommendations may give a slant to constitutional development, but they embody merely readjustments only and do not change the stipulations of the written document.

Q. Mr. Tomas Confesor: What are examples of the extra constitutional bodies of which you spoke?

A. Col. Kades: Perhaps more conspicuous examples of political institutions which are not contained in the Constitution are the Genro, or elder statesmen; the control which has been exercised by the military over the political situation in the past, and the system of appointing career officers as Ministers of War and Navy.

Q. M. Francis La Coste: I think that the alterations in the Japanese governmental system which are being carried out under the guidance of the Headquarters are in fact constitutional changes which should be ultimately incorporated in a revision of the written Constitution. I also think that your methods are entirely consistent with that objective and are satisfactory.

A. Col. Kades: Thank you, sir.

Q. Sir George Sansom: I agree with your distinction. Have you made any formal studies on this?

A. Col. Kades: No, Sir George, we have not.

Minutes of conference with Far Eastern Commission held 17 Jan 46.

Govt Sec (C.W.) C-in-C 18 Jan 46

For your information, I am attaching an extract from the minutes of the conference held yesterday with the Far Eastern Commission by the Government Section. The extract covers the questions asked by members of the Commission and the answers made with reference to the revision of the Japanese constitution.

C.W.

Incl:
As indicated.

EXTRACT FROM MINUTES OF CONFERENCE WITH FAR EASTERN COMMISSION ON 17 JANUARY 1946.

Q. Mr. Tomas Confesor: Are you considering amendments to the Constitution?

A. Col. Kades: No. The Government Section has understood that that is a long range problem concerning fundamental changes in the Japanese constitutional structure which is within the province of your Commission.

Q. Mr. Tomas Confesor: At the opening session of the Commission, we were given to understand by the Headquarters spokesman that your section was studying the Constitution. Is that wrong?

A. Col. Kades: There must have been some misunderstanding on your part. The Government Section advises the Supreme Commander on policies pertaining to the internal structure of civil government in Japan for the purpose of carrying out the basic directive issued by the United States Chiefs of Staff for the initial phases of the occupation. It has not considered the Constitution as a part of its work. I have thought that the Constitution was within the terms of reference of your Commission.

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A. Col. Kades: Thank you, sir.

Q. Sir George Sansom: I agree with your distinction. Have you made any formal studies on this?

A. Col. Kades: No, Sir George, we have not.

2

Memorandum re Constitutional Reform dated 1 February 1946

B-8.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section.

2

1 February 1946.

MEMORANDUM FOR THE SUPREME COMMANDER:

SUBJECT : Constitutional Reform.

1. The question of constitutional reform of the Japanese governmental system is rapidly approaching a climax. Several proposed revisions of the Japanese constitution have been drafted by governmental and private committees. Constitutional reform may well be a cardinal issue in the coming election campaign.

In these circumstances, I have considered the extent of your power as Supreme Commander to deal with fundamental changes in the Japanese constitutional structure, either by approving or disapproving proposals made by the Japanese government or by issuing orders or directives to that government. In my opinion, in the absence of any policy decision by the Far Eastern Commission on the subject (which would, of course, be controlling), you have the same authority with reference to constitutional reform as you have with reference to any other matter of substance in the occupation and control of Japan.

2. You have authority from the Allied Powers to proceed with constitutional reform. In accordance with the agreement among the governments of the US, USSR, UK and China, the President of the United States designated you as Supreme Commander for the Allied Powers to "take such steps as you deem proper to effectuate the surrender terms". (Par. 5 of Designation). By the Instrument of Surrender, the Japanese Government accepted the provisions of the Potsdam Declaration. (Par. 1 of Instrument). The Potsdam Declaration requires the Japanese government to "remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people", and the establishment "in accordance with the freely expressed will of the Japanese people of a peacefully inclined and responsible government". (Pars. 10 & 12 of Declaration).

To achieve this alteration in the nature of Japan's governmental institutions requires fundamental changes in the Japanese constitutional structure; and such alteration is essential to the execution of the Potsdam Declaration. Therefore, your authority to effectuate constitutional reform designed to develop a form of government responsible to the people is implicit in the terms of your designation by the Allied Powers as Supreme Commander for the purpose of enforcing the surrender terms.

3. You have authority from the Joint Chiefs of Staff to proceed with constitutional reform. The Joint Chiefs of Staff have directed that you "exercise your authority as you deem proper to carry out your mission," (Cable No. WX 60333 dated 7 September 1945). Your mission as set forth in the basic

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occupation directive for Japan (JCS 1380/15) includes: (a) carrying out measures for "the strengthening of democratic tendencies and processes in governmental, economic and social institutions", (b) permitting and favoring "changes in the direction of modifying the feudal and authoritarian tendencies of the government, and (c) informing the Japanese that "they will be expected to develop a non-militaristic and democratic Japan", (Pars. 3a, 3c, and 4c of Directive).

It is clear that you cannot accomplish these aspects of your mission without effecting fundamental changes in the Japanese constitutional structure. Since the development of a democratic Japan has been explicitly made a part of your mission, you have ample authority from the Joint Chiefs of Staff to approve or order constitutional reform designed to achieve the desired result.

4. Your authority to make policy decisions on constitutional reform continues substantially unimpaired until the Far Eastern Commission promulgates its own policy decisions on this subject. The Charter of the Allied Council for Japan requires you to consult and advise "with the Council in advance of orders on matters of substance" but your "decisions upon these matters shall be controlling", (Par. 5 of Charter). The sole limitation imposed upon your authority to effect constitutional reform exists in case a member of the Council disagrees with a proposed order "regarding the implementation of policy decisions of the Far Eastern Commission on questions concerning * * * fundamental changes in the Japanese constitutional structure" (Par. 6 of Charter). In such event your order would be referred to the F.E.C. to determine whether it properly implemented the F.E.C. policy decision.

In the absence of any F.E.C. policy decision, however, there is no restriction upon your executive authority except (a) insofar as the obligation for advance consultation with the Allied Council limits the manner in which your authority is exercised, and (b) insofar as the F.E.C. may review any action you may take. Under its charter, the F.E.C. may, at the request of any member, review any directive issued to you or any action taken by you, (Par. II, A, 2. of Charter). Similarly, no directive may be issued to you by the Joint Chiefs of Staff or any other agency of the United States Government "dealing with fundamental changes in the Japanese constitutional structure" without "the attainment of agreement in the Far Eastern Commission", (Par III, 3). Neither of these provisions, however, precludes your taking action pursuant to existing directives to approve or direct constitutional reform.

5. Should the F.E.C. eventually promulgate a policy directive involving changes in the constitutional structure, your decision in the issuance of directives (orders) thereon would not be controlling if any member of the Allied Council for Japan objected. It is my opinion that the word "order" in the charter of the Allied Council is used in the sense of compulsion and would not embrace a mere approval by you of constitutional reform measures submitted to you by the Japanese government, although your action in approving the same would be subject to review by the F.E.C. under the general review authority of its charter.

6. To recapitulate, I am of the opinion (a) that you now have the unrestricted authority to take any action you deem proper in effecting changes in the Japanese constitutional structure --the only possible restriction being upon action taken by you toward removal of the Emperor, in which case you are

required to consult with the Joint Chiefs of Staff; (b) should the F.E.C. issue a policy directive dealing with the matter of constitutional reform, then and in such event the issuance of any constitutional reform directive (order) upon the Japanese government would be subject to objection by any member of the Allied Council for Japan and your decision would not be controlling.

7. The above opinion represents the composite view of all officers of the Government Section who have examined this question.

COURTNEY WHITNEY,
Brigadier General, U.S. Army,
Chief, Government Section.

3

Memorandum re "Tentative Plan" of Matsumoto Committee
dated 2 February 1946.

B-11.1

(2)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

2 February 1946

MEMORANDUM FOR THE SUPREME COMMANDER:

SUBJECT : Constitutional Reform (Matsumoto draft).

1. Yesterday (1 February) the Mainichi Shimbun published what it claimed to be a draft revised Constitution prepared by the Cabinet (Matsumoto) Commission. Inclosed is a tentative translation of the draft, (Tab "A").

2. This draft is extremely conservative in character and leaves substantially unchanged the status of the Emperor with all rights of sovereignty vested in him. For this reason (along with others), the draft was poorly received by the press and the public.

3. The Government has now taken official cognizance of this unfavorable reaction and the Chief Secretary of the Cabinet (Wataru Narahashi) last night publicly denied that the published draft represents the work of the Cabinet (Matsumoto) Commission. Narahashi admitted, however, that the draft might represent a draft prepared by one of the members.

4. The published draft apparently was Matsumoto's own draft since he stated to the press yesterday that the status of the Emperor would remain substantially the same in a revised Constitution "except for some changes in terms used."

5. The upshot has been that a Foreign Office representative telephoned us this morning asking for postponement until next Thursday of the informal meeting which Yoshida had scheduled for Tuesday morning (5 February) for the purpose of discussing Matsumoto's draft. However, I postponed the conference for one week (i.e. until 12 February) since, now that Yoshida's trial balloon has been punctured, it is possible that the Cabinet Commission may want to undertake a more genuine constitutional revision which would comply in good faith with the Potsdam Declaration.

6. I thought it advisable to agree to this meeting (which Yoshida stated would be "off the record" and on a no commitment basis) as I could foresee that the reactionary group carrying the ball on constitutional reform were way off the beam that you could agree to. I thought it better strategy to orient them before the formal submission of a draft than to wait and force them to again start from scratch once an unacceptable draft had been submitted to which they were committed.

COURTNEY WHITNEY,
Brigadier General, U.S. Army,
Chief, Government Section.

1 Incl - Tab "A"
Tentative Plan of
Constitutional problem
Investigation Committee,
1 Feb 46.

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TAB A

THE TENTATIVE PLAN OF THE CONSTITUTIONAL PROBLEM INVESTIGATION COMMITTEE

MAINICHI SHIMBUN

1 February 1946

The Constitution Investigation Committee held meetings more than twenty times under its chairmanship of State Minister Matsumoto since November last year. At those meetings every committeeman submitted his private plan for the revision of the constitution, which consisted of A plan and B plan, and debated on them. Consequently the draft was completed at the committee on 26 January and is to be decided at the plenary meeting on 2 February.

The Government is speeding up its decision to submit the draft of the revised constitution to the Allied Headquarters and the Far East Committee, and urgently introduced it to the extra ordinary Cabinet meeting with State Minister Matsumoto's explanation article by article on 30 January. Ministers expressed their opinions actively and debated on it at the extra ordinary Cabinet meeting on 31 January.

COPY

TAB A

CONSTITUTIONAL INVESTIGATION COMMITTEE PROVISIONAL DRAFT PUBLISHED IN THE MAINICHI SHIMBUN, FEBRUARY 1, 1946

(Tentative Translation)

CHAPTER I THE EMPEROR

Article 1. Japan is a monarchy. "Absolute in light of remaining provisions."

Article 2. The Emperor is the monarch and exercises the rights of sovereignty according to provisions of present constitution.

Article 3. Imperial Throne shall be succeeded to by Imperial male descendants unbroken for ages eternal according to the provisions of the Imperial House Law.

Article 4. The Emperor assumes no responsibilities for his actions. (One possible rendition of this reads "The Emperor shall not be punished for his actions")

Article 5. (Same as present constitution) The Emperor exercises the legislative power with the consent of the Imperial Diet.

Leaves Emperor free to act without controls

Article 6. (Unchanged) The Emperor gives sanction to laws and orders them to be promulgated and executed.

Article 7. The Emperor shall convene the Diet and he shall order the opening, closing and prorogation of the Diet Session and he shall order the dissolution of the Diet.

Without control

Article 8. The Emperor in consequence of the need for the maintenance of public safety or to avoid public calamities, issues, with the approval of the Diet Deliberation Committee, Imperial Ordinances in place of law, and this Imperial Ordinance shall be submitted to the following Diet Session. If not approved by the Diet they shall become invalid for the future and this must be published (so as to inform) the public.

Article 9. The Emperor issues or causes to be issued ordinances necessary for carrying out of the law. However, he cannot order the change of a law.

Acts clearly as the Executive

Article 10. The Emperor determines the organization of all branches of administration and the salaries, appointments and dismissal of all civil officials. However in special cases that apply to this constitution or other laws they will be determined by the respective articles (bearing thereon).

Absolute executive power

Article 11. (Deleted) This article stated that the Emperor has the supreme command of the Army and Navy.

Article 12. (Deleted) This article in the present constitution states that the Emperor determines the organization and peace standing of the Army and Navy.

Article 13. The Emperor concludes treaties but treaties which concern matters which must be regulated by law and treaties which place important responsibilities upon the state require the approval of the Diet.

No control by Cabinet

The Emperor orders the promulgation and execution of treaties.

Treaties become effective as laws with promulgation.

Article 14. (Deleted) This article states that the Emperor declares a state of siege.

Article 15. The Emperor confers marks of honor.

Executive Power

Article 16. (Unchanged) The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article 17. (Unchanged) A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

The Regent shall exercise the powers appertaining to the Emperor in his name.

Chapter II

Rights and Duties of Subjects

Article 18. (Unchanged) The conditions necessary for being a Japanese subject shall be determined by law.

Article 19. J apanese subjects are equal before the law. Japanese subjects may according to qualifications determined in laws and ordinances, be appointed to civil or any other public office without discrimination.

Article 20. Japanese subjects are eligible for honorary appointments and other public offices according to provisions of the law.

Article 21. (Unchanged) Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article 22. Japanese subjects shall have the liberty of abode and of changing the same as well as the liberty of occupational choice.

Restrictions required for public welfare shall be determined by law.

Objections ng right of habeus corpus	Article 23.	(Unchanged) No Japanese subject shall be arrested, detained, tried or punished, unless according to law.
no protection for accused person	Article 24.	(Unchanged) No Japanese subject shall be deprived of his right of being tried by the judges determined by law.
	Article 25.	No Japanese subject shall have his residence invaded and the restriction necessary to maintain public peace shall be under the provisions of the law.
No guarantee of speedy trial	Article 26.	Any Japanese subject shall not be violated as regards privacy of personal correspondence, and the restrictions necessary to maintain public peace shall be under the provisions of the law.
No protection against forcible self incrimination	Article 27.	(Unchanged) T he right of property of every Japanese subject shall remain inviolate.
		Measures necessary to be taken for the public benefit shall be provided for by law.
No protection to other persons than Japanese subjects	Article 28.	Every Japanese subject shall have freedom of religious belief and the restrictions necessary to maintain public peace shall be under the provisions of the law.
		The special privileges that every shrine has ever had shall be abolished.
All provisions are subject to being negated by "law" etc	Article 29.	Every Japanese subject shall have freedom of speech, writing, publishing, meeting and association and the restrictions necessary to maintain public peace shall be under the provisions of the law.
	Article 30.	Every Japanese subject shall be allowed to petition under the provisions of the law.
		Every Japanese subject shall have a right and duty to receive education under the provisions of the law.
No absolute freedom of speech, religion, etc.		Every Japanese subject shall have the right and duty of labor under the provisions of the law.
		Every Japanese subject shall not have his freedom and right invaded without recourse to law except on the matters mentioned in this chapter.
	Article 31.	(Deleted) States that the provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of national emergency.

Article 32. (Unchanged) Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the offices and men of the Army and of the Navy.

Chapter III

The Imperial Diet

Article 33. The Imperial Diet shall consist of two Houses; the House of State Councillors (Sangi in) and the House of Representatives.

Article 34. The House of State Councillors shall be organized by the members elected by every local deliberative assembly and the members who are the representatives of various occupations under the provisions of the House of State Councillors Law.

Article 35. The House of Representatives shall be organized by the members elected in accordance with the fundamental principles of liberty, equality, fairness and secrecy under the provisions of the Election Law. "with regulatory power vested in the Home Ministry.

Article 36. (Unchanged) No one can at one and the same time be a Member of both Houses.

Article 37. (Unchanged) Every law requires the consent of the Imperial Diet. "No provision for executive veto - may be a negative power when read with Article 40."

Article 38. (Unchanged) Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article 39. (Unchanged) A Bill, which has been rejected by either the one or the other of the two Houses, shall not be again brought in during the same session.

Article 40. (Unchanged) Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Wholly inconsistent with Article 37

Article 41. (Unchanged) The Imperial Diet shall be convoked every year. indefinite

Article 42. The Imperial Diet shall have a session of three months. If necessary, the session shall be prolonged through an Imperial Ordinance or decision of each House.

Article 43. If extraordinarily and urgently necessary, in addition to a regular session, an extraordinary session shall be convoked.

Both Houses shall be allowed to ask convocation of an extraordinary session through agreement of more than one third of the members of each House. "merely right of petition"

Amounts to a concurrent power with the Emperor to prolong session

The session of an extraordinary Diet shall be fixed by an Imperial ordinance.

If necessary, the session shall be prolonged through an Imperial ordinance or decision of each House.

Article 44. (Unchanged) The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses.

No provision for dissolution of the Diet

If one House should be ordered to be dissolved the other one shall be naturally closed.

Article 45. If the House should be ordered to be dissolved, its members shall be immediately changed and an extraordinary session shall be convoked within three months from the day of dissolution

This rule, however, shall not be applicable when a regular session is convoked during that period.

Article 46. (Unchanged) No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one third of the whole number of the Members thereof is present.

One third constitutes quorum

Article 47. (Unchanged) Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article 48. ("Demand of the Government" is Deleted)
The deliberations of both Houses shall be held in public. The deliberations may, however, by resolution of the House, be held in secret sitting.

Article 49. (Unchanged) Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article 50. (Unchanged) Both Houses may receive petitions presented by subjects.

Article 51. (Unchanged) Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs. ?

Article 52. (Unchanged) No Member of either House shall be held responsible outside the respective Houses, for any opinion

uttered or for an vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article 53. The members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

(Addition) Members arrested prior to opening of session may be released during the session when requested by the House.

Article 54. (Unchanged) The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

(The Investigation Committee of the Imperial Diet shall
(be established in the Imperial Diet under the provisions
(of the Parliamentary Law.

The Investigation Committee of the Imperial Diet shall be organized by the members of both Houses.

Even if every committeeman should lose his post as a member of the Diet on account of the expiration of his term of office or dissolution, he shall continue his duty till the successor takes up his post.

Chapter IV

The Ministers of State and the Privy Council

Article 55. Every state minister shall give his advice to the Emperor and be responsible for him.

(Unchanged) A ll Laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of the State, require the counter-signature of a Minister of State.

Every state minister shall need the confidence of the Imperial Diet on his being in office.

Sets up an invincibility of Ministers. Gives Emperor sole power to dissolve the Diet -

(If one House should decide the want of confidence in
(any state minister, the government shall be allowed to
(petition to the Emperor to dissolve that House. However,
(if that House should decide the want of confidence in
(him again at the next session, that state minister shall
(retire from office.

Article 56. All the state ministers shall organize a cabinet.

The system and official powers shall be fixed by the law.

Chapter V

The Judicature

Article 57. (Unchanged) T he Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

The organization of the Courts of Law shall be determined by law.

No safeguards for independent judiciary

Article 58. (Unchanged) The judges shall be appointed from among those who possess proper qualifications according to law.

No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment.

Rules for disciplinary punishment shall be determined by law.

Article 59. (Unchanged) Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provision of law or by the decision of the Court of law.

Article 60. (Unchanged) All matters that fall within the competency of a special Court shall be specially provided for by law.

Article 61. Every law suit against any administrative government office for infringement on rights by illegal measures or any other law suits concerning administrative affairs shall fall under the jurisdiction of a judicial court.

Chapter VI

Finance

Article 62. (Unchanged) The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law.

(However, all such administrative fees or other revenue
(having the nature of compensation <u>shall not</u> fall within
(the category of the above clause.

The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article 63. (Unchanged) The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article 64. (Unchanged) The expenditure and revenue of the State require the consent of the Imperial Diet by means of an Annual budget.

Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Article 65. (Unchanged) The Budget shall be first laid before the House of Representative.

If the House of Representatives should remove or eliminate any article or item of the budget, the House of State Councillors shall not be allowed to restore it. ~~to the formal state.~~

Article 66. The expenses of the Imperial Court shall be paid out of the Treasury every year at the especially fixed constant sum, and approval of the Imperial Diet shall be unnecessary except where the increase of the sum be necessary.

Article 67. "The determined annual expenditure based on constitutional sovereignty" is eliminated.

Article 68. (Unchanged) In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.

Article 69. (Unchanged) In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.

Where a reserve fund be appropriated for necessary expenditure other than by the budget, a debate at the Investigation Committee of the Imperial Diet shall be necessary.

If a reserve fund should be paid, it shall be necessary to ask approval of the Imperial Diet later.

Article 70. "Through the debate of the Investigation Committee of the Imperial Diet" is added after "If impossible."

Article 71. If the budget should fail to secure Parliamentary approval within the fiscal year, the government shall make a temporary budget with the period of 3 months within the limits of the budgets of the preceding fiscal year under the provision of the Financial Law and enforce it. In the case of the preceding item if the Imperial Diet should be out of session, the government shall immediately convoke a session and submit the budget which is removed the part concerning the period of that fiscal year fixed in the preceding item. If the budget fixed in the preceding item should fail to secure Parliamentary approval within the period fixed in Item 1, the Government shall make and enforce a temporary budget according to Item 1. The rule of the preceding item shall be applicable correspondingly to this case.

Provision negatives the authority of the Diet to establish the budget

Article 72. (Unchanged) The final account of the expenditures and revenue of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board.

The organization and competency of the Board of Audit shall be determined by law separately.

Chapter VII

Supplementary Rules

Article 73. (Unchanged) When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order.

Leaves absolute power of constitutional revision in hands of the Emperor as he alone can submit proposed revisions to the Diet. Should it fail to pass measure the Emperor still has the power by Imperial Ordinance

The members of both Houses shall be allowed to propose a revision of the Constitution through agreement of more than one third of all the members of each House.

Both Houses shall not be allowed to debate on the revision of the constitution, if more than two thirds of the members of each House should not be present. Both Houses shall not be allowed to decide the revision if more than two thirds should not agree.

The Emperor shall sanction the revision of the constitution decided at the Imperial Diet and order its promulgation and enforcement.

Article 74. (Unchanged) No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

No provision of the present Constitution can be modified by the Imperial House Law.

Article 75. (Unchanged) No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article 76. (Unchanged) Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Ar. LXVII.

C-in-C Outline of Constitution, Sunday, 3 February 1946.

4

B-23.1

Copy of Pencilled Notes of C-ou-C handed me on Sunday, 3 Feb. '46 to be basis of draft Constitution. [illegible]

COPY

SECRET

I

Emperor is at the head of the state.

His succession is dynastic.

His duties and powers will be exercised in accordance with the Constitution and responsibe to the basic will of the people as provided therein.

II.

War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and even for preserving its own security. It relies upon the higher ideals which are now stirring the world for its defense and its protection.

No Japanese Army, Navy or Air Force will ever be authorized and no rights of belligerency will ever by conferred upon any Japanese force.

III.

The feudal system of Japan will cease.

No rights of peerage except those of the Imperial family will extend beyond the lives of those now existent.

No patent of nobility will from this time forth embody within itself any National or Civic power of government.

Pattern budget after British system.

"Gist" of Matsumoto Revision submitted 7 February 1946.

7 Feb 46
Matsumoto

(Original)
As submitted by Matsumoto Committee in Sept with Explanation (copy only) attached

5

GIST OF THE REVISION OF THE CONSTITUTION.

CHAPTER I. THE EMPEROR.

1. Article 3 which now reads: "The Emperor is sacred and inviolable" shall be changed to : "The Emperor is supreme and inviolable."

2. A provision shall be made to preclude the dissolution of the House of Representatives provided for in Article 7 being ordered repeatedly for one and the same cause.

3. It shall be provided that the urgent Imperial Ordinances mentioned in Article 8 must, before being issued, be referred to the Permanent Committee of the Imperial Diet in accordance with the provisions of the Diet Law.

4. The part of Article 9 which now reads: "ordinances necessary.....for the maintenance of public peace and order, and for the promotion of the welfare of the subjects" shall be changed to : "ordinances necessary for the attainment of the objects of administration." (Cf. No. 10 of Outline).

5. The part of Article 11 which now reads: "the Army and Navy" shall be changed to : "the armed forces"; and Article 12 shall be revised so as to provide that the organization and peace standing of the armed forces shall be determined by law. (Cf. No. 20 of Outline).

6. The provisions of Article 13 shall be revised so as to provide that the Imperial prerogative of making war and peace, and of concluding treaties concerning matters which must be determined by law or treaties which imposes a grave duty upon the

state requires the consent of the Imperial Diet; but that where, by reason of circumstances internal or external, there exists a necessity of such urgent nature that it is impossible to await the convocation of the Imperial Diet, it shall be sufficient to refer such matters to the Permanent Committee of the Imperial Diet. In such case a report shall duly be made to the Imperial Diet at its next session and its approval obtained thereto.

7. Article 15 which now reads: "The Emperor confers titles of nobility, rank, orders and other marks of honor" shall be changed to: "The Emperor confers marks of honor."

CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS.

8. The phrase "amenable to service in the Army or Navy" in Article 20 shall be changed to "amenable to service in the public interest."

9. Article 28 shall be revised so as to provide that Japanese subjects shall, within limits not prejudicial to peace and order, enjoy freedom of religious belief.

10. A provision shall be made to the effect that in addition to the cases mentioned in the present Chapter, no restrictions of whatever nature may be imposed upon the freedom and rights of Japanese subjects except by law.

11. The provisions of Article 31 concerning the emergency authority of the Emperor shall be deleted.

12. Article 32 containing provisions concerning military and naval personnel shall be deleted.

CHAPTER III. THE IMPERIAL DIET.

13. In Article 33 et seq., the term "the House of Peers" shall be changed to "the House of Senators".

14. Article 34 shall be revised so as to provide that the House of Senators shall be composed of members who have been elected thereto and of those who have been appointed thereto by the Emperor, in accordance with the Law concerning the House of Senators.

15. A provision shall be made to the effect that a draft law which has been passed by the House of Representatives three times in succession by at least a two-thirds majority of all its members, upon being submitted to the House of Senators, be deemed to have obtained the consent of the Imperial Diet irrespective of whether or not it is voted upon by the House of Senators.

16. The period of "three-months" provided for in Article 42 as the duration of a session of the Imperial Diet shall be changed to "a period of not less than three months to be determined by the Law concerning the Imperial Diet".

17. The period "within five months" provided for in Article 45 as the period within which the House of Representatives is required to be convoked subsequent to its dissolution shall be changed to " within three months".

18. The proviso of Article 48 shall be revised so as to provide that the deliberations of either House may be held in secret session only in pursuance of a resolution of the House concerned.

19. A provision shall be made to the effect that a member of either House who has been arrested prior to the opening of the Imperial Diet session shall be released during such session if his release is demanded by the House to which he belongs.

CHAPTER IV. THE MINISTERS OF STATE AND THE PRIVY COUNCIL.

20. The first paragraph of Article 55 shall be revised so as to provide that the respective Ministers of State shall act in an advisory capacity to the Emperor and be responsible to the Imperial Diet, even as regards the supreme command of the armed forces.

21. A provision shall be made to the effect that when the House of Representatives has passed a vote of non-confidence against any Minister of State, such Minister may not remain in office except in cases where the House has been dissolved. (Cf. No. 2 of the Outline).

22. A provision shall be made to the effect that the Cabinet shall be made up of all the Ministers of State, and that the organization of the Cabinet shall be determined by law.

23. A provision shall be made to the effect that the organization of the Privy Council shall be determined by law.

CHAPTER V. THE JUDICATURE.

24. Article 61 shall be revised so as to provide that litigations involving administrative matters shall come within the jurisdiction of Courts of Law (i.e. rather than of Courts of Administrative Litigation) in accordance with other laws governing such matters.

CHAPTER VI. FINANCE.

25. A provision shall be made to the effect that the House of Senators may not effect an amendment which increases the amount of a budget already passed by the House of Representatives.

26. Article 66 shall be revised so as to provide that of the expenditures of the Imperial Household, the expenditures of the Imperial Court, and those only, shall be defrayed each year from the national treasury without the necessity of obtaining the consent of the Imperial Diet, except in cases where such expenditures are to be increased.

27. Article 67 shall be revised so as to provide that the Imperial Diet may, even without the concurrence of the Government, reject or reduce those expenditures already fixed which are based by the Constitution upon the powers appertaining to the Emperor.

28. A provision shall be made to the effect that in cases where a reserve fund is to be applied to defray any necessary expenditures not included in the budget, as well as where payments are to be made otherwise than out of a reserve fund to cover unavoidable deficiencies in the budget or to meet necessary expenditures not included in the budget, such cases shall be referred to the Permanent Committee of the Imperial Diet.

29. It shall be provided that the emergency financial measures provided for in Article 70 must be referred to the Permanent Committee of the Imperial Diet.

30. Article 71 shall be revised so as to provide that in cases where the budget has not been passed, the government shall

prepare a tentative budget in accordance with the provisions of the Finance Law and shall carry out such tentative budget pending the passage of the (regular) budget. If in such cases the Diet is not in session, the Government shall forthwith convoke the Diet and submit thereto for approval the tentative budget, together with the budget for that year.

CHAPTER VII. SUPPLEMENTARY RULES.

31. A provision shall be made to the effect that a member of either House may, with the concurrence of not less than one-half of all the members of the House to which he belongs, introduce a motion for revision of the Constitution.

32. A provision shall be made to the effect that the Emperor sanctions any constitutional revision passed by the Imperial Diet and orders its promulgation and enforcement.

33. Article 75 governing restrictions on the modification of the Constitution and of the Imperial House Law shall be deleted.

34. Provisions necessary for the enforcement of all the revised provisions of the Constitution above-mentioned shall be made.

GENERAL EXPLANATION OF THE CONSTITUTIONAL REVISION DRAFTED BY THE GOVERNMENT

I. Paragraph 10 of the Potsdam Declaration contains the following statement: "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. The freedom of speech, of religion, and of thought as well as respect for the fundamental human rights shall be established."

The Japanese Government, in order to comply with the purport of the said Declaration, addressed itself to the task of revising the Constitution, which was promulgated on 11th February, 1889, and has come down to this day without having undergone a single revision. The fundamental spirit of the present draft revision of the Constitution is therefore to render the Constitution more democratic and to facilitate complete attainment of the object of Para. 10 of the Potsdam Declaration above-mentioned.

II. In the task of drafting a revision of the Constitution on the basis of the fundamental spirit as mentioned in the preceding paragraph, the first problem encountered is the question as to whether the so-called "Emperor system" should be retained or abolished. Considering the fact that Japan has been reigned over by a line of Emperors unbroken from the very beginning of our national history, there is no room for doubt but that an overwhelming majority of our people are strongly desirous of retaining the system. That is the reason why the draft revision proposes to maintain a system wherein the Emperor exercised sovereign power, rather than to adopt a republican form of government with a president at its head, or so-called "presidential democracy."

However, the present draft revision stipulates first, that the authority of the Emperor shall be greatly restricted, by requiring all important matters of state shall have the consent of the Imperial Diet (or of the Permanent Committee which represents the Diet, in unavoidable cases of urgency) (cf. Nos. 2 to 6, 11, 22, 23 and 27 to 30 of the Outline of the Draft Revision); second, that it is only with the advice of the Ministers of State that the Emperor may carry out the affairs of state, even as regards the supreme command of the armed forces (cf. No. 20 of the Outline); and third, that the Ministers of State shall be responsible to the Imperial Diet, and hence indirectly to the people, and that the Ministers of State and the Cabinet of which they are members may not remain in their posts without the confidence and support of the House of Representatives (cf. Nos. 2 and 20 to 22 of the Outline). Under the Constitution thus revised, the sovereign power of the Emperor will be exercised through the Imperial Diet in the field of legislation; through the Cabinet, which is wholly based on the Diet, in the field of administration; and through independent Courts of Justice in the judicial sphere. In effect, we shall have a system similar to that of England wherein so-called "parliamentary democracy" has complete sway.

Such being the general purport of the present draft revision, it was decided to make no changes in the language of the fundamental provisions contained in Arts. 1 to 4; with the single exception that in Art. 3 which reads: "The Emperor is sacred and inviolable," the word "supreme" is substituted for "sacred;" for although the latter term was used in a considerable number of Constitutions of

European countries during the 19th century, it is neither suitable nor desirable today in that it is suggestive of the divine origin and character of the Emperor and his sovereign power (cf. No. 3 of the Outline).

III. Although there are provisions in the laws currently in force which are calculated to afford considerable protection to the freedom of speech, of religion and of thought, as well as the fundamental human rights, of the Japanese people, in practice not only were they not duly respected but at times were seriously infringed upon. Such a situation was due to the enactment of evil laws and the abuse of laws under governments with undemocratic tendencies. But under the present draft revision, with its provisions for the formation of a democratic government and the expansion of the powers of the Imperial Diet as explained above, it is certain that through the just application of laws justly enacted due respect for the freedom and human rights of Japanese subjects will be secured, in complete contrast to the situation that prevailed hitherto. The draft revision, moreover, provides for further safeguards, as follows:

Firstly, the provisions of the old Constitution which provided for the protection of the freedom and rights of the Japanese people tended to be merely enumerative, and hence was open to the interpretation that any freedom not specifically mentioned in such provisions, e.g. the freedom of carrying on a business, might be restricted otherwise than by law. In the draft revision, therefore, it is proposed to insert a general provision to the effect that in addition to the cases provided for in the relevant provisions of the old Constitution no restrictions of whatever nature may be imposed upon the freedom and rights of Japanese subjects except by law (cf. No. 10 of the Outline).

Secondly, under the provisions of the old Constitution a Japanese subject whose right was infringed upon by an illegal measure taken by an administrative authority was not entitled to seek protection in an ordinary Court of Law but had to seek his remedy in a specially established Court of Litigation, with the result that his right was not always adequately protected; and in practice, cases were by no means rare where no protection was given at all owing to the denial of jurisdiction by both the ordinary Court of Law and the special Court of Litigation (negative conflict of competence). The draft revision, therefore, provided that Courts of Administrative Litigation shall be abolished, and that cases involving administrative matters shall come under the jurisdiction of ordinary Courts of Law (cf. No. 24 of the Outline.)

Thirdly, in addition to the above, revision of the provisions relating to administrative ordinances, revision of the provisions relating to freedom of religious thought and abolition of the provisions relating to the authority of the Emperor in cases of national emergency are proposed with a view to rendering even more sound the safeguards afforded to the freedom and rights of the Japanese people (cf. Nos. 4, 9 and 11 of the Outline).

Fourthly, the old Constitution contained provisions recognizing the existence of Peers as a special privileged class, as well as provisions recognizing special treatment for army and navy personnel. Under the draft revision all such provisions recognizing inequalities among the Japanese people will be either revised or abolished (cf. Nos. 7, 12 and 14 of the Outline).

IV. As already stated in Para. II above, the draft revision proposes to enlarge the powers of the Imperial Diet. To that end there are, in addition, revisions or insertions of new provisions concerning such matters as the duration of the Diet session, etc. (cf. Nos. 16 to 19 of the Outline).

The draft revision proposes also to modify the organization of the House of Peers by excluding the Imperial Princes and members of Nobility from membership and determining its organization by law instead of by ordinance, and also to change the nomenclature of the House, i.e. to "House of Senators" (cf. Nos. 13 and 14 of the Outline). Moreover, the old system wherein the House of Peers had the same powers as the House of Representatives is to be modified so as to tender the powers of the House of Senators merely subsidiary to those of the House of Representatives (cf. Nos. 15, 21 and 25 of the Outline). As a result of this revision our House of Representatives will come to occupy a position of superiority similar to that held by the House of Commons vis-a-vis the House of Lords in England.

The above revision of the provisions concerning the Imperial Diet, we believe, will make no small contribution to the strengthening of democratic tendencies in Japan.

V. Finally, a brief explanation of certain points in the draft revision not covered in the preceding paragraphs.

Firstly, a system of Privy Council was sometimes criticized on the ground that it was prone to hamper the operation of constitutional politics,--the reason for the criticism being that the Privy Council which was in no way responsible to the Imperial Diet had certain important powers. However, under the draft revision, urgent ordinances or orders concerning emergency financial measures must be referred to the Permanent Committee of the Imperial Diet before they are issued, while conclusion of treaties is made subject to the approval of the Imperial Diet (cf. Nos. 3, 6, and 29 of the Outline). In respect of such important affairs of state, therefore, authority of the Privy Council will be excluded. And since, as a further check, the organization of the Privy Council is to be determined by law, the powers of Privy Councillors cannot but be greatly curtailed. And since the number of Privy Councillors will in all probability be reduced, the Privy Council will most likely be reduced to a politically harmless body (cf. No. 23 of the Outline). It is, therefore, not proposed to abolish the body, especially as there is necessity for its retention for purposes of application of the Imperial House Law and other laws.

Secondly, all the expenditures of the Imperial Household were hitherto defrayed according to a fixed amount without the necessity of obtaining the consent of the Imperial Diet. But under the draft revision, only the expenditures of the Imperial Court may be thus defrayed without the consent of the Diet (cf. No. 26 of the Outline).

Thirdly, the right of initiating constitutional revision which hitherto was vested solely in the Emperor is to be recognized also for members of the Imperial Diet (cf. No. 31 of the Outline). This is the most important modification proposed by the present draft revision.

Fourthly, modification of the Constitution or of the Imperial House Law was hitherto prohibited during the period of a Regency; but that prohibition is removed by the draft revision (cf. No. 33 of the Outline). This, too, is a point of considerable importance.

PROPOSED REVISION OF THE ARMY AND NAVY PROVISIONS IN THE CONSTITUTION

1. The words "army" and "navy" will be struck out of the Constitution and they will read simply "armed forces."

Even if the time should arrive when, upon completion of allied occupation, Japan is permitted to rearm, the armed forces would be of a very limited scope such as are necessary for the maintenance of peace and order in the country. Moreover, the nation on its own part should harbour no intention of having again any army or navy such as it had before. Accordingly, it is proposed to drop the words "army" and "navy."

2. Under the old Constitution the command of the armed services is not considered part of government affairs, and the armed forces, belonging directly to the Emperor, are placed outside the control of the government. This has led to the disastrous abuses of the past. Under the revised constitution the command of armed forces will be exercised solely through the assistance of the Cabinet and State Ministers. On the other hand, since the new constitution will make the Cabinet responsible to the Diet and any State Minister will not be able to remain at his post, if a non-confidence resolution is adopted by the House of Representatives, there will be no danger that the armed command may be exercised against the will of the people.

3. Under the old constitution the organization and the strength of the armed forces are matters to be determined by Imperial prerogative. Under the new constitution those matters will be fixed by law, so that without the approval of the Diet not a single soldier can be added, nor a single regiment established.

4. The reason why it is considered advisable that such revisions should be made in the constitution at this time is that it will serve to provide a definite basis as regards the status and character of the armed forces in case Japan is permitted to rearm, and also to prevent the die-hard elements from clinging to their wishful thinking that Japan might some day build up such army and navy as of old. If in conformity to the actual circumstances of today when there exist no armed forces, all provisions relating thereto are left out of the new constitution, it may encourage some people to cherish secretly such illusions as mentioned above. At the same time, it will entail, in case Japan is permitted to reestablish her armed services, the necessity of revising the Constitution once more, which in turn may give rise to all manner of dispute and controversy. Furthermore, it is thought that if Japan be permitted to join the United Nations Organization, the need for rearmament might actually rise in order that she may fulfill her obligations under its charter.

6

Steering Committee Minutes - 5, 6, 7, 8, 9, 11 and 12 February 1946.

B-34.1

Summary Report on Meeting of the Government Section, 5 Feb. 1946.
Present: Col Kades, Lt Col Hays, Comdr Swope, Lt Col Rowell, Capt Rizzo, Lt Hauge, Mr. Peake, Miss Norman, Miss Ellerman.

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1. The Use of Japanese Terminology:

It was agreed that Japanese terminology and forms should be used wherever possible in the Government Section's draft of the Constitution. However, in all instances where our meaning is better clarified by the use of American phraseology the Japanese form must be discarded and the American wording used.

2. Problem of a Bicameral vs. Unicameral Legislature:

The conclusion was reached that a number of considerations made it preferable to propose a unicameral rather than a bicameral legislature. There is nothing in Japanese political development to particularly recommend the bicameral system, and General MacArthur has expressed a preference for the unicameral system for Japan. Simplicity recommends the unicameral legislature as well; if the bicameral system is established it involves the use of two forms of representation, and the difficult problem of deciding to which House the 'vote of no confidence' will belong. Colonel Kades suggested that this issue might give us an effective bargaining lever. If we propose the unicameral legislature and the Japanese strongly oppose its adoption, we might well compromise on this issue in order to strengthen our position in insisting upon a more important issue.

3. The Power of the Supreme Court:

The delimitation of the Supreme Court's power of review was discussed. Colonel Kades felt that SWNCC 228 limited us to granting only a temporary power of veto to the Supreme Court. Commander Hussey stated that this limitation applied only to the Supreme Court's legislative veto and that we are warranted in giving the Supreme Court absolute power of review over questions of Constitutional interpretation.

4. The Power of the Executive.

Colonel Kades suggested that in strengthening the legislative and judicial branches of the Japanese Government, the executive branch had been stripped of all real power. If the legislative body voted 'no confidence' the Cabinet would be forced to resign, and a kind of executive vacuum would result. Commander Hussey and Mr. Peake offered that even if the 'Government' resigned and/or appealed to the electrate, an Interim Cabinet would continue to exercise residual power during the

General Election period and until the new Cabinet (or the old Cabinet, if returned) took office. During this interim period the ordinary house-keeping functions of Government would continue, existing obligations would be paid out of authorized appropriations but no new enterprises could be initiated and no new budgetary committments made. It should be possible to form a new Government within a ninety day period; even if, for any reason, this was not practicable, the Diet would be in session.

Mr. Peake raised the question of whether certain powers of the executive should be written into the Constitution. For example, should it be specified that the Executive announce the appointment of the Prime Minister? Will the Executive affix the seal to all laws and promulgate them in his name? Colonel Kades stated that these relatively unimportant powers should not be specified. If they are written into the Constitution, future changes in procedure can be made only by the formal amendment of the Constitution. Commander Hussey pointed out that if it is clearly established that the Emperor or the Executive acts only on the advice of, and with the approval of the Cabinet, which is responsible to the legislature, the affixing of the state seal becomes little more than ceremonial procedure.

5. Budgetary Control:

Colonel Kades does not believe that detailed budgetary controls need be written into the Constitution. An unequivocal statement that no budget can become effective without express approval of the legislative body should be adequate.

6. The Cabinet:

The processes by which the Prime Minister and the Cabinet are to be selected will automatically solve themselves, and need not be specified in the Constitution. The likely solution is that the House or Diet will appoint the Prime Minister from the majority party, or, if there is no clear majority party, the Prime Minister will be a coalition choice. The Prime Minister, in turn, will select his Cabinet from either the majority party or a coalition of parties and submit his list to the House or Diet for approval.

7. Residual Power:

Captain Rizzo brought up the problem of our formalization of the final source of power. Colonel Kades said that all powers not explicitly delegated to the judicial, executive or administrative branches of the Government, resided in the legislative body. The supremacy of the representative body, immediately responsive to the electorate, must be emphasized in the Government Section's draft.

Summary Report on Meeting of the Government Section, 6 Feb. 1946.
Present: Col Kades, Lt Col Hays, Comdr Hussey, Lt Comdr Maddolm, Ens Poole, Lt Nelson, Maj Tilton, Lt Esman, Lt Col Roest, Miss Stone, Lt Hauge, Lt Col Rowell, Mr Wildes, Miss Sirota, Capt Rizzo, Mr Keeney, Mrs Norman Mr Peake, Comdr Swope, Miss Ellerman.

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1. Security:

The Staff was reminded again that no Japanese are to be admitted to the Government Section during the progress of this work. All papers relating to the work are to be locked in the safe overnight. Those officers who will attend the Narashi Dinner are cautioned that there is to be no political discussion of any kind.

2. Time Limit:

Sub-committee first drafts must be completed by tomorrow. These drafts will be in the form of one original, three carbons, double-spaced.

3. Problem of Psychological Credibility:

Lt Col Roest stated that the promulgation of a Government Section inspired Constitution as a strictly Japanese document poses the question of psychological credibility. An obvious discrepancy exists between an ideal Constitution formed upon American political experience and thinking, and the actions and past expressions of the present Japanese Government.

Colonel Kades granted this discrepancy, but pointed out that no comparable gap exists between American political ideology and the best or most liberal Japanese constitutional thought.

4. Order of Presentation:

Colonel Kades stated that the Section defining the position of the Emperor should immediately follow the Preamble.

5. Budgetary Power:

The Executive will have no power of veto. Captain Rizzo questioned the advisability of this. If there is no executive veto, there is no effective hinderance to prevent the legislature from running wild in appropriations; it is conceivable that expensive boondoggling and pork-barrel projects might result.

Mr. Peake answered that once a Cabinet budget has been presented to the Diet and approved, the Diet cannot increase the appropriations. The legislature can manipulate funds only within the limits of the approved budget. The Cabinet assumes responsibility for the annual budget, and presumably the Cabinet would resign rather

than continue to take responsibility for budgetary manipulations of which it did not approve. Commander Swope added, on the analogy of Puerto Rican experience, that the Executive has the practical power of refusing to act upon an appropriations bill of which he disapproves. Colonel Kades emphasized once again that the Diet has all powers not explicitly prohibited to it by the Constitution.

6. Conformity with SWNCC 228:

SWNCC 228 must be used as a control document. Each Sub-committee Chief is responsible for checking his committee's proposal for conformity.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

MEMORANDUM TO THE CONSTITUTION STEERING COMMITTEE:

We dissent from the provisions of this draft which deny to the Prime Minister authority to dissolve the Diet and appeal to the people when major legislation introduced by him fails to receive favorable consideration from the Diet. This omission gravely compromises the workability of a cabinet system. It reproduces the very weakest feature of French experience by inducing the executive to resign while denying him any bargaining power in cases of disagreement with the Diet. Or it inflicts on the Japanese the most difficult feature of the American system, the possibility of a deadlock between the executive and the legislature, the Diet rejecting the Prime Minister's bills, the latter, though discredited, clinging to office. It is not likely, in our opinion, that the Prime Minister would abuse his power to dissolve, since every dissolution endangers his continuity in office as well as that of the legislature. Under the proposed system, a Diet will seldom vote non confidence, since it may by other devices reject government measures without risking its own tenure.

Government under modern conditions requires a strong and responsible executive. Responsibility is amply provided in the draft proposal. But the effectiveness of an executive depends on his ability to pilot a consistent policy through the legislature. A Diet, representing as legislatures must, divergent political, sectional and economic interests, will tend to pull in many directions. Under these conditions an irresponsible Diet is as much to be feared as an irresponsible executive. The irresponsible tendencies of the Diet, in keeping with decades of

experience in Parliamentary government, can best be disciplined by an executive who enjoys the power to dissolve a Diet which fails to act favorably on his major proposals. This power and the threat of its use tend to assure a stable yet responsible executive.

The omission of this important power may, contrary to our intention, saddle the feeble and inexperienced Japanese democracy with devices which have seriously tried the most delicate political skill of veteran democratic peoples. There is a greater likelihood of success if we provide the Japanese with governmental devices which long experience has indicated are most likely to develop stable democratic institutions.

/s/ Milton J. Esman
/t/ MILTON J. ESMAN
1st Lt, TC

/s/ Jacob I. Miller
/t/ JACOB I. MILLER

Meeting of the Steering Committee with Committee on The Emperor (original draft), Wednesday, 6th February 1946.

In the initial discussion of the Chapter on the Emperor, the Steering Committee consistently pressed for a strict delimitation of all powers of the Emperor, and the absolute clarification of his merely decorative role. The following points were discussed:

1. The first article, defining sovereignty was ordered struck out. In the Preamble sovereignty ~~was~~ *is* placed in the people and needs no further amplification. The Steering Committee took exception to the use of the term "reign" in defining the role of the Emperor. Col. Rowell pointed out that in Japanese usage "reign" carries the connotation of "govern" as well. The text was amended to read "The Emperor shall be the symbol of the State and the Unity of the People..... "

2. Colonel Kades objected to the excess of inititive power granted to the Emperor in Article V (definition of the duties of the Emperor). The Steering Committee recommended that this Article include a covering or restrictive clause explicitly stating that the Emperor performs certain state functions only on the advice and with the consent of the Cabinet.

3. The clause giving the Emperor the right to "confirm the judgments of Courts of Law, including the Diet when sitting as a court" was ordered struck out. This clause permits invasion of the independence of the Court, and might be interpreted to mean that all judicial decisions must be confirmed by the Emperor. Commander Hussey emphasized the necessity of establishing a Constitutional Court independent of the legislative and executive branches.

4. The Steering Committee protested the authorization of four Imperial officers (two Privy Ministers, a Lord Keeper of the Privy Seal, and a Lord Chamberlain) in Article VI. Colonel Kades objected that this legitimatized extra-constitutional officials who were responsible to the Emperor rather than to the

Diet, or to the people and moreover, falsely exalted officials whose duties, under a liberal Constitution, could be little more than clerkly. Col. Rowell pointed out that this obligated the Diet to pass a budget to support them. Ensign Poole defended the clause as a strict limitation upon the personal officers of the Emperor and thus a constitutional check upon any further building up or expansion of the Imperial Household Staff. The Steering Committee unanimously agreed that this clause over-emphasized the importance of the Imperial Household and ordered it omitted from the final draft of the Chapter.

5. The Steering Committee objected to the article making it mandatory for the Budget to include appropriations for Throne expenditures. Provisions for Throne expenditures are included in the Chapter on Finance. Emphasis should be given, rather, in the Chapter on the Emperor, to the complete powerlessness of the Throne either to receive grants or funds or to make expenditures without prior authorization of the Diet.

Miscellaneous Section

1. Amendments

There was a sharp cleavage of opinion over the amendment provision as originally written by Ensign Poole and Captain Nelson. The Steering Committee objected to the heavy restrictions placed upon the people's right of amendment,--that all amendments are to be prohibited until 1955, that no amendments can be initiated unless proposed by a 2/3 vote of the Diet, or ratified by less than a 3/4 vote of the Diet. Captain Nelson and Ensign Poole justified these restraints on the premise that the Japanese people are not ready for a democracy, and that we are caught in the uncomfortable position of writing a liberal Constitution for a people who still think mystically. Therefore the ten years' ban on amendments will prevent the Japanese from losing their newly-acquired democracy while they are in process of learning the techniques of self-government. After 1955 an extraordinary

session of the Diet can be convened, and every ten years thereafter, to consider constitutional amendment. The relatively high 2/3 and 3/4 Diet vote requirements for proposal and ratification make it impossible for the political whim of a mere majority to change the Constitution.

The Steering Committee made both theoretical and practical objections to these protective restrictions. The ~~uniting~~ writing of a liberal constitution must be premised upon a responsible electorate and no one generation has the right to delimit another generation's freedom to amend its Constitution. A Constitution should be not only a reasonably permanent document but a flexible one as well, with a simple rather than complicated amendment procedure. Col. Kades recommended that the provision for mandatory review every ten years be omitted. Commander Hussey recommended that amendments be initiated by the Diet, thru a concurring vote of two-thirds of all its members and be ratified by an affirmative vote of a majority of the electorate.

2. Treaty-Making Powers:

The Steering Committee decided that the Article on Treaty Making Powers be incorporated in the Chapter on the Executive. In redrafting the article the Steering Committee broke on the issue of whether international agreements of all kinds must be submitted to the Diet for ratification. Col. Kades thought not. The making of international agreements is within the province of the Executive, and sufficient check to the executive power is provided by requiring that all international agreements and conventions needing enabling power must go to the Diet for ratification.

Colonel Rowell disagreed. Today international agreements are so all-embracing in their effects on the well-being and lives of the people that final control over all treaty making powers must be placed in the Diet. When it likes, the Diet can give the Cabinet treaty making powers on specific issues, i.e. in concluding postal conventions or narcotic agreements, by passing a bill to that effect. But it should be clearly established in the Constitution that the Cabinet shall conclude all treaties, international conventions and agreements with the consent of Diet, either by prior authorization or subsequent ratification.

In conclusion, Commander Swope pointed out that the basic principle in the drafting of this Constitution has been the strengthening of the legislative over the Executive branch of government.

3. Impeachment:

The original draft of this article provided that all

officers of the State shall be removed from office upon impeachment for and conviction of treason, bribery, or any high crime or misdemeanor. The Steering Committee recommended that the article on impeachment be omitted and the use of impeachment be restricted to removal of members of the judiciary. Impeachment, as a general technique for the dismissal of public officials is cumbersome and time-consuming, and would necessitate the Diet sitting as a Court of Impeachment every time a charge was made against a public official. The Prime Minister can be removed from office by a vote of non-confidence, he can remove his individual ministers at will, civil servants can be removed, the Diet can be permitted to make its own rules for the removal of its members, and all other elected officials can be recalled. A provision should be added to the Chapter on Local Government for the forfeiture of office when a local official is convicted of a crime.

4. Treason:

In the first discussion of this article it was decided to amend the draft in order to give protection ~~for~~ to non-nationals. Col. Rowell pointed out that an individual cannot commit treason unless he has given allegiance to the State established by the Constitution. The Bill of Rights should give protection to everyone in Japan, whether or not he supports the Government established. Commander Hussey suggested that the statement be added "no person not a Japanese national shall be convicted of the crime of treason."

5. Supreme Law of the Land:

Colonel Kades objected to the original draft of the first two articles as lacking positive force; it is not sufficient to state, merely, that all laws and governmental acts shall be subject to the Constitution. The article should read, rather, that no Imperial Rescript nor any other law can exist outside of the Constitution.

The Steering Committee discarded the oath clause. The provision binding the Emperor and other public officials to acceptance of the Constitution by oath, premises an authority higher than the Constitution. Further, an oath requirement in a

Japanese Constitution is little more than an importation of an Anglo-Saxon procedure.

6. Ratification:

The article providing for ratification by a concurring vote of two-thirds of the members of the Diet, was amended to read "This constitution shall be established when ratified by the Diet by a roll-call vote of two-thirds of the members present", on the theory that very few members of the Diet would dare to vote against ratification if it involved giving a negative vote in a public session of the Diet.

7. At the conclusion of the discussion on The Supreme Law, Captain Nelson offered a minority report. He stated that someplace in the Constitution, probably in the Preamble or the Supreme Law, a statement must be made that this Constitution draws its sovereignity not only from the will of the people but from the principles of universal morality. A blunt statement must be made that rectitude as well as physical strength is the source of authority.

Colonel Kades protested that the establishment of a kind of universal church has no place in a national constitution. The validity of the Constitution stems from the Japanese people and not from any universal morality. Sovereignity is based upon strength, and every nation will rely upon force to defend its right to the exercise of sovereignity.

Commander Hussey agreed with Captain Nelson. We have come to recognize, if rather uneasily, a superior law that governs the people of all nations. We are trying war criminals on the basis of that law.

Colonel Kades was not convinced. It was agreed, however, that Commander Hussey work out an acceptable formalization of this law of universal political morality.

Meeting of the Steering Committee with Committee on the Diet (original draft), Thursday, 7 February, 1946.

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1. On the suggestion of Colonel Kades the membership of the Diet was set within 300 and 500, instead of within 300 and 450, as originally specified. The present membership of the Diet is 465, and a reduction of seats would be protested by the Japanese and necessitate a reapportionment of seats.

2. Article VIII of the original draft specified the method and condition of election for Diet members. Col. Kades objected that provisions of this kind are essentially statutory rather than constitutional law, and that the Diet will be competent to write its own election law. The article was struck out.

3. Article XIV defined a quorum to transact business as consisting of not less than 50% of all the members. Colonel Kades and Commander Swope argued that this figure was too high; a quorum should be fixed at one-third of all the membership. If the requirement is higher, formation of a quorum can be manipulated as a delaying action for bills.

4. In discussion of Article XVII, providing for the referral of bills to the Cabinet for promulgation, Col. Kades questioned the lack of provision for an executive veto. Commander Swope defended this omission on the score that Cabinet promulgation should be no more than a procedural formality. The Diet must have decisive and ultimate power over all legislation.

5. In the discussion of Article XVIII, the Steering Committee questioned the provision that all deliberations of the Diet shall be public and that no secret sessions shall be held. It is conceivable that while in progress debates involving international negotiations should not be made public. In defense of the prohibition, Col. Hays said that an unequivocal prohibition of all secret sessions is the only way to prevent Japanese abuse. Proceedings that legitimately demand secrecy can be handled in committee.

6. In Article XX it is stated that the Diet may punish for contempt in its conduct of investigations. Col. Kades objected that this provision might be manipulated to suppress criticism of the Government, that it would come to be construed as 'lese majeste'. This clause was cut out of the revised draft.

7. On the recommendation of the Steering Committee Article XXI, giving the Diet the privilege of making representations to the Government, was struck out as superfluous. The Diet is the supreme body of the land, and need not be authorized to make representations to the Cabinet.

8. In the discussion of Article XXIII, that requires a new election held within 40 days after the dissolution of the old Diet, Col. Kades objected to the shortness of the time limit. He thought it conceivable that an election campaign fought on the basis of important issues might well take as long as two months. Colonel Kades was over-ruled by the other members of the Steering Committee and the Diet Committee and the Article remained as originally written.

9. Colonel Kades questioned the advisability of members of the Diet consituting a court of impeachment to try members of the judiciary against whom proceedings have been instituted. Commander Swope and Col. Rowell argued that the Diet was the only body left with the authority to try members of the judiciary, for the judiciary can't sit as a court of impeachment for its own members. Col. Kades then protested that the 2/3 vote requirement for conviction was too high to ever secure an impeachment. Compromise was reached by the decision to use the Diet as a court of impeachment for the Judiciary, but to drop the 2/3 vote requirement for conviction.

Meeting of the Steering Committee with Committee on Finance (original draft), Thursday 7 February 1946.

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1. Under Article V the Diet is forbidden to make appropriations for any fiscal year in excess of the income provided for that year. Colonel Kades questioned the wisdom of this delimitation since it ~~would~~ makes impossible the long-term planning involved in public works programs. Total funds for such projects ~~could~~ can not be appropriated out of the income or borrowings of any one fiscal year (or even spent within one year), but the Diet should have the power to authorize initial appropriations and schedule further appropriations to be used over a period of successive years. Captain Rizzo defended the original prohibition by pointing out that the Diet should be permitted to examine critically each year's budget. Further, the Diet should be faced with the necessity of providing as well as spending, and no one Diet should have the power to commit future Diets to appropriation. The Steering Committee concurred and the Article was retained.

2. Article VIII, providing for the making of a temporary budget in the event that a Cabinet fails to secure parliamentary approval for its budget within the fiscal year, was discarded. It was intended to provide running expenses for a period in which Cabinet and Diet might be at loggerheads. Commander Hussey stated that the Constitution must not provide any possible loophole for an executive budget. If a Cabinet cannot secure parliamentary approval for its budget within a year, that Cabinet must be forced to resign. Unavoidable expenditures ~~could~~ can be paid out of the reserve fund, until approval is secured or a new Cabinet is formed.

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Meeting of the Steering Committee with Committee on the Executive (original draft), 7 February 1946.

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1. Commander Hussey objected that the wording of "The Prime

Minister shall be nominated by the Emperor." implied discretionary power in the hands of the Emperor in the appointment of the Prime Minister. This article was rewritten to read "The Emperor appoints as Prime Minister the person designated by the Diet" and incorporated in the Chapter on the Emperor.

2. Article III, defining the membership of the Cabinet, was amended to tighten the Diet's control over the Cabinet. Col. Rowell insisted that Ministers can be appointed only to those ministerial offices specifically authorized by the Diet. Moderate executive powers are vested in the Prime Minister, however, by permitting him to remove Ministers at will.

3. The Steering Committee recommended the omission of Article VI, providing for general elections and the convening of new legislatures. These procedures are treated in the Chapter on the Diet.

4. The Steering Committee recommended that Article VI, defining the duties of the Prime Minister, be rewritten to emphasize the collective responsibility of the Cabinet rather than the executive preeminence of the Prime Minister. To prevent abuse of power by the Prime Minister, it is explicitly stated that "The Prime Minister introduces bills on the behalf of the Cabinet, ..." To prevent abuse of executive power while the Diet is not in session Colonel Rowell suggested that the Cabinet's power to issue orders and regulations to carry out the provisions of the Constitution be restricted by the provision that "no such order or regulation shall contain a penal provision."

5. The Steering Committee recommended the omission of Article IX, requiring that the Prime Minister and members of his Cabinet subscribe to a pledge upon assuming office.

6. The Steering Committee recommended that the clauses in Article XI, defining procedures for the discharge of unfaithful public officials, be omitted from the Constitution and provided for in statutory law. However, in order to give Cabinet Ministers protection from the police, provision was made that

"Cabinet Ministers shall not be subject to judicial process during their tenure of office without the consent of the Prime Minister."

Meeting of the Steering Committee with the Committee on the Judiciary (original draft), 7 February 1946.

Colonel Kades questioned the extreme power given to the judiciary and suggested that the kind of Supreme Court established in this draft might develop into a judicial oligarchy, dominating all other branches of government. Judges are to be appointed for life, they are to be independent of all discipline but their own, executive and administrative courts are ruled out, and the supreme rule making power is vested in the Supreme Court.

1. Colonel Rowell pointed out that the courts in Japan have had neither dignity nor independence. They have been the tool of the Procurator and a judge's career depended upon subservience to the police. The power of the Court, therefore, ~~was~~ has been given a deliberate build-up to compensate for its former lack of stature.

2. The power of the Diet has been strengthened enormously in this Constitution and an independent judiciary will not invade the prerogatives of the legislature.

3. Abuse of the Constitution by a judicial oligarchy is not likely; the Diet has been given the power of review over all judicial decisions, except for those involving provisions in the Bill of Rights.

4. Commander Hussey defended the prohibition of extraordinary tribunals and the denial of judicial power to executive courts by pointing out that there has been too much of Star Chamber justice in Japan and that administrative courts consistently have protected the bureaucracy at the expense of the citizen. Final compromise on this issue was reached by amending the clause to

read "nor shall any organ or agency of the Executive be given final judicial power." This will permit administrative courts to exist but under and subject to the Supreme Court.

5. A revival of the Public Procurator's abuse of power can be prevented only by explicitly making him subject to the Court.

6. Commander Hussey stated that the dignity of the Court is weakened if judges are elected for a term of years rather than appointed to hold office during good behavior. A judge's ability for impartial action is impaired if he must gain office by running as a political candidate on a party platform. Compromise on this issue was reached by having judges of the inferior courts appointed by the Cabinet from a list which for each vacancy shall contain the names of at least two persons nominated by the Supreme Court. The term of appointment is to be for ten years with privilege of reappointment. However, no judge shall hold office after reaching the age of 70 years.

Supreme Court judges shall be appointed by the Cabinet and shall hold office during good behavior but not after reaching the age of 70 years. The Judiciary is brought closer to the people by providing that such appointments shall be reviewed at the first general election held following the appointment and thereafter at every general election held ten years after the prior confirmation.

7. The only proper place for the rule-making power and final judicial power is the Supreme Court. Within this frame of reference, the legislative branch of government can establish any kind court it desires.

Meeting of the Steering Committee with Committee on Civil Rights (Original Draft) Friday, 8 February 1946.

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1. Commander Hussey objected to Article II on the grounds that it reserved unenumerated rights to the people. Residual power is in the Diet and the people can have no rights against a Diet which is their own creation. It is stated elsewhere in the Constitution that the will of the people, exercised through the Diet, is supreme.

2. A sharp and fundamental difference of opinion developed between the Steering Committee and the Drafting Committee in the discussion of Article IV, that asserts that no future Constitution, law or ordinance shall limit or cancel the rights guaranteed in this Constitution, or subordinate public welfare and democracy to any other consideration. Colonel Kades strongly objected to the assumption of infallibility implicit in this Article and the denial by one generation of the rights of future generations to order their own affairs. As written, amendments to the Bill of Rights would be invalid and change could come only through revolution.

Colonel Roest defended this Article by premising that the present age has arrived at a certain stage of Progress, and that no future generation should be permitted to abrogate the rights now accepted as inherent in the state of man. He continued, that it was not enough, as Colonel Kades believed, to set up a democratic government in Japan, but rather that we must guarantee for all time the social and moral advances made up to the present. Mr. Wildes expressed the belief that the omission of Article IV inevitably opened the gates to Fascism in Japan.

Commander Hussey pointed out that Article IV not only attempted to exalt opinion and a theory of government to the stature of constitutional law, but it was impractical as well. Enforcement of this Article will depend upon the interpretations of the Supreme Court rather than upon precise rules laid down in the Constitution.

No satisfactory compromise could be reached. It was decided to submit Article IV to General Whitney for decision on inclusion or omission. (In the final draft of the document, this Article was omitted.)

3. The Steering Committee objected to the original form of Article V, that states that the right of individuals to life, liberty and the pursuit of happiness shall be the supreme consideration of all law. This conflicts with the earlier clause that gives the common welfare precedence over the right of the individual. The text was amended to include "within the general welfare".

4. The Steering Committee objected to the clause in Article VII that ~~gives~~ states that the people have the inalienable right to elect their public officials. Colonel Kades stated that this makes it necessary for all public officials to be elected, although constitutional provision had been made only for the election of members to the Diet. It was decided that the text should be amended to read, "They (i.e. the people) have the inalienable right to choose their public officials and to dismiss them."

5. The Steering Committee recommended the omission of Article IX that gives every citizen the right to compensation for damage inflicted or loss sustained by any official act not in accordance with the law. Colonel Rowell pointed out that this provision gives encouragement to procurators and police ~~to~~ in the use of third

degree and torture in order to secure a confession. If a man is charged and the authorities fail to secure a conviction, the authorities are liable to lawsuit and the payment of damages. Commander Hussey added, that making the State liable to suit involves a highly complicated procedure.

Colonel Roest defended the provision on the grounds that it gives protection to citizens by preventing the police from invading private homes, beating up people, taking property, etc. Colonel Kades stated that lawless actions on the part of officers of the law can be prevented by ordinary law; they can be sued as persons and damages collected if they are convicted. The Article was omitted.

6. In Article XI Colonel Rowell objected to the limitation placed upon freedom of person in the statement that "Freedom of person is the inalienable right of all law-abiding Japanese." The qualifying clause is reminiscent of usage in the present Japanese constitution where the enjoyment of certain rights is guaranteed "within the limits of the law." Commander Hussey and Colonel Kades objected to this first sentence of Article XI on the grounds that it was too sweeping a statement; there is no such thing as complete freedom of person. Its inclusion in the Constitution would mean that every time the State wanted to take action, objections could be made that the action involved an invasion of freedom of person. The real intent of this Article is that no person is property. Therefore it is adequate to provide that "No person shall be held in enslavement, serfdom or bondage of any kind."

7. As originally written Article XIII not only guaranteed freedom of religion but expressedly forbid all ecclesiastics from political activity of any kind. The Steering Committee questioned both the wisdom and the practicality of the latter provision. Colonel Kades objected that the denial of political activity to

ecclesiastics involved the denial to them of freedom of speech and press as well. A special prohibition of this kind has no place in a Constitution, which should be a Bill of Rights, rather than a Bill of Restrictions.

Colonel Roest stated that this Article was designed to prevent the abuse of spiritual authority to political ends. Japan has been a priest-ridden country for generations and political tyranny has been reinforced by the threat of spiritual punishment. It must be made clear to the Japanese that no political authority is attached to any ecclesiastical organization.

Commander Hussey agreed that people are persuaded to political action by the authority of the church, but pointed out that this is a matter of individual conscience, unlikely to be corrected by constitutional provision or statutory law. The further provision that "no religious body will be recognized as such if under the disguise of religion, it should stir up and practice antagonism to other or should weaken instead of strengthen public order and morality" could be used to justify the suppression of any new religious sect because it might disturb the established public order. On the one hand the Drafting Committee forbids ecclesiastical penetration into politics but on the other, it condones State interference with religion.

The Article was shortened and amended by the Steering Committee to read as a straight forward guarantee of freedom of religion and the separation of church and state.

8. Article XIV guaranteed freedom of speech and press but restricted this freedom to the exclusion of slander and libel. Colonel Kades objected to the prohibition of libel and slander as a serious ~~d~~limitation on the freedom of speech. Any criticism of government policy or action could be effectively muzzled by terming it slander or libel and hence liable to court action. The responsibility for proving slander or libel should be upon the individual and not upon the State. In the U. S. Constitution the guarantee of freedom of speech was written in to prevent the passage of a criminal libel law.

This paragraph was struck out and the Article rewritten to stand as a simple guarantee of the freedom of assembly, speech and press and all other forms of expression, without constitutional limitation.

9. In considering Article XVI the Steering Committee objected to the limitation placed upon freedom of assembly by the inclusion of the qualifying clause "for peaceful consideration." Instead of hedging the basic freedoms, the emphasis must be thrown upon the responsibility of the State to protect the people in the exercise of freedom of speech, press, and assembly.

The clause was omitted.

10. Article XII guaranteed freedom of academic teaching, study, and lawful research, and restricted the authority for dismissal of teachers to professional organizations or societies. The Steering Committee objected to the guarantee of research since the Allies intend to severely restrict some kinds of research and entirely forbid others.

Colonel Kades outlawed the restriction upon dismissals as procedure impertinent in a Constitution and properly belonging in statutory law,if anywhere. Colonel Roest defended its inclusion as a necessary corallary to academic freedom and as a specific against future "monkey trials." Colonel Kades objected that this clause vested constitutional authority in irresponsible bodies; no powers of government can be given to or exercised by any authority or society that is not responsible to the Diet.

This clause was dropped from the amended text.

11. Articles XVIII through XXV of the original draft gave detailed orders for the establishment of social welfare, public health, free education, orderly adoption and child labor laws in Japan. The Steering Committee contended that meretorious though they might be, these provisions were the concern of statutory regulation and not constitutional law.

Colonel Roest stated that inclusion of social welfare provisions was accepted practice in modern European constitutions. It is peculiarly necessary to include them here since state responsibility for the welfare of its people is a new concept in Japan and demands constitutional approval to encourage its widespread acceptance. At present women are chattels here, bastards take precedence over legitimate sons on the mere whim of a father, and any peasant can sell his daughter if the rice crop is bad. Commander Swope countered that even if we incorporate detailed instructions for the care of nursing mothers and the adoption of sons, conditions will not improve until the Diet passes implementary legislation. Mr Wildes agreed but fervently urged that we force the Japanese Government to go on record for these things.

Colonel Rowell objected that the setting-up of a complete system of social welfare was not part of the Government Section's responsibility. Insistence upon these provisions might cause so much resentment that the Japanese Government might reject our constitutional draft in toto. Mr Wildes answered that we do have the responsibility to effect a social revolution in Japan and that the most expedient way of doing so is to force through with the Constitution a reversal of social patterns. Colonel Rowell answered that you cannot impose a new mode of social thought upon a country by law.

No compromise solution could be found in this confusion of opposing social theories, so the Steering Committee recommended that General Whitney be consulted on the inclusion of this Section. General Whitney recommended that the minutia of social legislation be omitted and a general statement made that ~~[illegible]~~ social security shall be provided.

Second Meeting of the Steering Committee with Committee on the Executive, 8th February 1946.

Lt. Esman strongly opposed the changes made by the Steering Committee in the original draft of the Chapter on the Executive.

1. Lt Esman contended that the Prime Minister must be appointed by an authority above party politics, hence by the Emperor. This argument was premised on the belief that the Diet will be made up of many splinter parties, with unreconcilable differences amongst themselves, and with no one party able to achieve a clear majority. Under these conditions the selection of a Prime Minister can be little more than a compromise choice, arrived at after weeks of haggling, and as a compromise choice it is unlikely that he will be able to marshal Dietary support for Cabinet policies for any length of time. On the other hand, the Emperor can be expected to choose a Prime Minister quickly who can command majority support and thus prevent an executive vacuum occurring.

The Steering Committee remained unconvinced. Col. Rowell stated that a Prime Minister selected by the Emperor was incompatible with SWNCC 228. Colonel Kades expressed cynicism as to whether selection of a Prime Minister by the Emperor would be either more efficient or quicker than appointment by the Diet. The Diet might refuse not only the Emperors first nominee but successive ones as well. Also, the Emperor might manipulate his discretionary power in the appointment of the Prime Minister as a device for running the country without the Diet. In any case, any inefficiency involved in having the appointment of the Prime Minister made by the Diet is overbalanced by the danger of giving the Emperor or his advisers discretionary power.

2. Lt. Esman contended that the executive power should be explicitly vested in the Prime Minister as the head of his Cabinet and not in the Cabinet as a collective body. It is inconsistent to give the Prime Minister the power to hire and fire his Ministers at will, yet state that the executive power is vested in the Cabinet.

Colonel Rowell and Mr. Peake disagreed with Lt. Esman. Throughout SWNCC 228 the Cabinet and not the Prime Minister is referred to as the executive branch of government. Colonel Kades recommended that the residual executive power be vested in the Prime Minister, and the first Article of the Chapter amended to read "The executive power is vested in the Prime Minister as the head of the Cabinet."

An elaboration of Lt. Esman's argument for a strong executive is given in his dissenting Memorandum filed with the Steering Committee.

Second Meeting of the Steering Committee with Committee on Civil Rights (original draft), Saturday, 9 February 1946.

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1. In a rereading of Article III, that states that "The freedoms, rights, and opportunities provided by this Constitution derive from the self-disciplined cooperation of the people". Col. Kades objected to the use of the term 'self-disciplined' as a weazle word, open to misconstruction. The text was amended to read "The freedoms, rights and opportunities enunciated by this Constitution are maintained by the eternal vigilance of the people."

2. Col. Rowell objected to the vague inclusiveness of Article XXVI that states that "In all spheres of life laws shall be designed only for the promotion and extension of social welfare, and of freedom, justice and democracy....." Of necessity many laws are designed for purposes other than the promotion of social welfare. If all of these laws were discarded most private contracts would be made null and void. Further, a provision of this kind tends to encourage legislative interference in private affairs. The Steering Committee rewrote the Article to state that laws shall be designed for the promotion of social welfare in all spheres of life. The guarantee that those which tend to restrict the general welfare shall be replaced, was omitted.

3. In Article XXXVI ultimate title to the land and to all natural resources is given to the State and "hence the ownership of land and its resources is to be interpreted as a lease, the right to which is forfeited by misuse or continued non-use....." Colonel Kades stated that a strict interpretation of this Article would involve the abolishment of all private ownership of real property. Private ownership of land and its resources should not be referred to as a 'leasehold'. Colonel Roest stated this Article was deliberately designed to weaken the traditional belief that the individual can do as he likes with land without regard to the general welfare. Colonel Kades granted that the ultimate fee of all land and its resources resides in the State and that the State

has the right to take whatever it needs for the public use. But provision must be made for adequate compensation when property is so taken. This Article was rewritten in the terms recommended by the Steering Committee.

4. Objection was made by General Whitney to Article XXXII that gives workers the specific right to strike. He expressed the fear that this article might be subject to the unfortunate interpretation of standing as a constitutional encouragement to strike. The Article was amended to read "The right of workers to organize and act collectively is guaranteed."

5. Objection was made to Article XXXIV that assures freedom to all forms of expression other than speech and press but provides that legal measures may be taken for the suppression of indecent and degrading literature, plays, films, etc.. in the interests of the protection of youth and the maintenance of high public standards. The Steering Committee believed it excessive to give Constitutional blessings to the crusading pursuits of the Public Decency and Purity Leagues, and dangerous to afford any justification for police supervision of public expression. Any novel or play that criticized the government could be suppressed by labelling it "degrading" or "indecent". The restrictive clause was discarded.

6. Colonel Rowell objected to Article XXXVII that gives constitutional blessings to the right of inheritance. The right of inheritance has never been a fundamental right, and it should be subject to withdrawal any time the people and their representatives deem advisable. The Article was discarded.

7. The Steering Committee objected to Article XXXVIII that states that "contracts are protected by law but usury is prohibited and legal transactions which are contrary to public policy are null and void. The State shall not grant any monopolies." First, in matter the Article is largely concerned with affairs that should be regulated by statutory law, Secondly, this provision makes it impossible for the State to promote the general welfare by the grant of subsidies to certain industries (i.e. the merchant marine,

fisheries, etc...). Colonel Roest justified the prohibition of State subsidies and the grant of monopolies as a check to Government subsidization of war industries and the Zaibatsu. Commander Hussey answered that the Diet controls the purse and can thus prevent State subsidization of any industry it deems not in the public service. The Article was omitted in the final draft.

8. In the discussion of the Article on Testimony and Confession, General Whitney questioned the wisdom of the provision that "No confession shall be valid unless made in the presence of the counsel for the accused". This outlaws the use of spontaneous confession made immediately after the commission of a crime. Confession without counsel should be accepted in evidence if it is made without duress. Colonel Rowell stated that this provision was valid as a hedge against special Japanese abuses. Traditionally, here, the procurator is unwilling to go into court unless he has a confession, so he will go to extreme lengths, using third-degree, torture, threat, to secure a confession before bringing the case to trial. General Whitney acknowledged the prevalence of the abuse of confession in Japan but stated that sufficient hedge against abuse would be provided by the proscription that no confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

9. General Whitney questioned the provision in the Article on Trial that the accused shall, at his trial, be confronted with all the witnesses against him and be permitted through counsel to cross examine such witnesses. This has not been our procedure at the War Crime Trials now in progress; in the Yamashita trial, affidavits have been used in court and Yamashita has had no opportunity to cross-examine this evidence. The Japanese might criticize us for establishing one kind of trial procedure in the Constitution, while finding it more convenient to use another procedure in our conduct of the War Crimes Trials.

Colonel Rowell answered that the War Crimes Trials are under military law, and the Constitution sets up civil law. Further,

there is little reason to believe that our conduct of the Trials will shock Japanese judicial sensibilities. Japanese law has never provided for the cross examination of witnesses in the American fashion.

The text was amended to read "The accused shall be permitted full opportunity to cross-examine all witnesses."

Meeting of the Steering Committee on the Chapter on Local Government, Monday 11 February, 1946.

The original Committee Draft of the Chapter on Local Government was discarded as inadequate, and a new draft prepared by the Steering Committee. This draft guarantees a limited local autonomy for metropolitan areas, cities and towns and other subordinate bodies politic and corporate, having taxing power. These bodies are privileged to manage their own affairs and frame their own charters within the limits defined by the Diet. Provision is made for the election by direct popular vote of the chief executive officers of all subordinate bodies politic and corporate having taxing power, and the members of local and prefectural legislatative assemblies and such other prefectural and local officials as the Diet may determine. The Diet is forbidden to pass a special act applicable to a local community where a general act can be made applicable, unless the special act is approved by a majority of the electorate of the community concerned. In general, the final draft of the Chapter on Local Government is a reconciliation of two opposing views. One represented by Colonel Rowell, a strong home rule man, and the other by Colonel Kades, a warm central government man.

Review of the Amended Drafts by the Steering Committee, 12 February 1946.

Miscellaneous Articles

1. The Steering Committee decided to take out the Treason Article as unnecessary in a Constitution that renounces war.

2. In the Chapter on the Supreme Law it is stated that the Emperor upon succeeding to the throne, Ministers of State, Members of the Diet, Members of the Judiciary, and all other public officers upon assuming office shall be bound to uphold this Constitution. Commander Hussey pointed out, however, that this document nowhere defines the status of national and prefectural officers already holding office when the Constitution goes into effect and no provision has been made for their acceptance of the Constitution. On the recommendation of Colonel Kades, a saving clause was added to the Supreme Law, providing that all public officials duly holding office when this Constitution takes effect shall likewise be so bound and shall remain in office until their successors are elected or appointed.

The Executive

1. Commander Hussey, who had not been present at the Friday afternoon session on the Executive, made serious objections to the changes in text. Commander Hussey insisted that we must set up a cabinet system collectively responsible to the Diet, and not a system of government dominated by the individual executive, whether he be Prime Minister or Emperor. Individual rather than collective responsibility is not only hostile to SWNCC 228 but entirely inconsistent with the way things are done in Japan. Article I of the Chapter on the Executive was reversed to its original form "The executive power is vested in a Cabinet."

The Emperor

1. The juxtaposition of the Imperial Throne and the Emperor in the first Article of this Chapter involved a double symbolism. In the interests of simplicity, the mysticism of the Imperial

Throne was discarded. "The Emperor shall be the symbol of the State and the Unity of the People....."

2. The Article on the ceremonial appointment of the Prime Minister by the Emperor was correlated with the provision for the selection of the Prime Minister in the Chapter on the Diet. It was amended to read, "The Emperor appoints as Prime Minister the person designated by the Diet."

The Preamble

Commander Hussey suggested the following statement for inclusion ~~with~~ in the Preamble:

"We acknowledge that no people is responsible to itself alone, but that laws of political morality are universal and it is by these laws that we obtain sovereignity."

Colonel Kades immediately protested its inclusion. The promulgation of a universal law of morality, based upon ideology rather than pragmatics, is unhappily reminiscent of the divine right of kings. Every people, every state, has an inviolable right to go its own way as long as it behaves and does not impinge upon the equal rights of other people and other states. Even a world state, supposing that one could exist, can have no right to tell another nation what it can and can't do with its own people. Each state is the ultimate arbiter of its own destiny; if it chooses it may decide upon international cooperation, but it derives its sovereignity from necessity and from nothing else. Practically speaking political morality and sovereignity have nothing to do with each other.

Commander Hussey pointed out that the establishment of the United Nations Organization makes reasoning of this kind both archaic and foolish. The recognition of a basic political morality, binding upon all nations, will be accepted as a self-evident truth within fifty years. No nation has the right to exercise sovereignity if its exercise violates universal political morality. The general acceptance of that premise is the practical basis for the Nuremberg Trials now going on. We are trying German officials for what they did to their own people.

General Whitney entered the discussion. Colonel Kades recapitulated the opposing arguments. He stated that the clause asserted a false proposition and that if it were included in the Constitution it would so weaken the practical 'principles' embodied in the document that our Constitution would be considered little more than a gloss of words. Colonel Kades confessed, however, that he too believed that the clause might come to be accepted as a platitude in a hundred years.

General Whitney stated that the phrase "by these laws we obtain sovereignty" takes issue with Japanese beliefs inculcated by two thousand years of training. The principle established by the clause is a good one, but the wording should be less violent. General Whitney suggested the following as a substitute for the original draft:

"We acknowledge that no people is responsible to itself alone, but that laws of political morality are universal and that obedience to such laws is incumbent upon all peoples who would maintain their own sovereignity and justify their sovereign relations with others."

The final form of this clause as incorporated in the Preamble is as follows:

"We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignity and justify their sovereign relationship with other peoples."

Rights and Duties of the People

1. The Steering Committee changed the title of the Civil Rights Chapter to "The Rights and Duties of the People."

2. To again reemphasize the subordination of the Throne to the people, the Article stating that "The people are the ultimate arbiters of their government" was amended to include the phrase "and of the Imperial Throne".

3. Provision for the assistance of ~~their~~ diplomatic representatives and interpreters when charged with any offense, was cut out of the Article assuring aliens the equal protection of the law. This provision can be taken care of in statutory law.

4. The clause forbidding the banishment of Japanese nationals was cut from the text since a certain equivocation as to beneficiary existed.

5. In considering the Article establishing that laws shall be designed for the promotion and extension of social welfare, and of freedom, justice and democracy in all spheres of life, Commander Hussey objected to the clause making it obligatory for the Diet to repeal restrictive legislation and enact new legislation to accomplish the social welfare as it is defined in the Constitution. Commander Hussey expressed a certain scepticism as to the universal and incontroversial validity of some of the principles enumerated in this Article, and the preceding one on the rehabilitation of the family, and questioned the propriety of their incorporation in constitutional law rather than in statutory regulation.

The mandatory clause was struck out and a generalized statement was made that in all spheres of life, laws shall be designed for the promotion and extension of social welfare.

6. Colonel Kades suggested that the clause ordering the protection of intellectual labor and the rights of scientists, authors, artists, whether native or foreign, be omitted. Not only is the procedure for the protection of intellectual labor a vague and ill-defined one, but its implementation involves international relations. The laws of international copyright can be left to statutory regulation.

<u>The Diet</u>

1. The Article defining procedure in the event of a vote of non-confidence by a majority of the total membership of the Diet, was amended as follows "Within ten days after the passage of a resolution of non-confidence or the failure to pass a resolution of confidence by a majority of the total membership of the Diet, the Cabinet shall resign or order the Diet to dissolve." The inclusion of the "or the failure to pass a resolution of confidence"

permits the Cabinet to test a controversial bill when a sharply divided house exists. Colonel Kades suggested that the newly elected Diet be convoked within thirty days after the date of election, rather than within twenty days, in order to give sufficient time for the counting of votes.

2. It was decided to include the Article on the appointment of the Prime Minister in the Chapter on the Diet, and require that the designation of the Prime Minister take precedence over all other business of the Diet. Colonel Rowell questioned the latter provision since an intolerable situation might occur in the event that the Diet was badly split and unable to quickly find a Prime Minister acceptable to all parties. The appointment of the Prime Minister might take weeks and meanwhile all normal business and the passage of bills would be held up. Commander Hussey stated that sufficient pressure would undoubtedly be exerted by the electorate to force the Diet to conclude its selection of the Prime Minister quickly.

The Judiciary

During the re-reading of this Chapter Colonel Kades again questioned the wisdom of giving the Judiciary what he conceived to be extraordinary power. Commander Hussey rendered judgment that the Chapter should be left as it stood.

Finance

1. The statement of Dietary control over the income and the expenditures of the Imperial Household was made more emphatic by explicitly stating that all property belonging to the Imperial Household, other than hereditary estates shall belong to the nation, and the income from all Imperial properties shall be paid into the national treasury; allowances and expenses of the Imperial Household shall be appropriated by the Diet in the annual budget. On the suggestion of Colonel Rowell exception from national ownership was made in the case of hereditary estates . An ESS and NRS paper, to which the Government Section has given concurrence, recommended that exeeption from national ownership be made for the

Imperial Estates around Kyoto that have belonged to the Emperor's family since the early Tokugawa Shogun period.

Check sheet dated 10 Feb 46 submitting Government Section draft with explanatory note.

7

B-69.1

EXPLANATORY NOTES TO CONSTITUTIONAL REVISION

1. The purpose of this memorandum is to explain the guiding principles and major provisions of the draft revision of the Japanese Constitution submitted by the Public Administration Division, Government Section.

2. Objectives of the revision:

a. To prepare a draft of the Constitution which will fulfill the requirements of the Potsdam Declaration as to the nature of the government which Japan must establish before the Occupation Forces are withdrawn and Japan is admitted to the community of nations.

b. To remove the objectionable features of the present constitution and to establish safeguards against a resumption of power by bureaucratic oligarchs and irresponsible militarists in the name of the Emperor.

3. General principles underlying the revision as a whole:

a. Establish a constitutional monarchy with sovereignty reposing in the people by modifying the Emperor system and making the Emperor the ceremonial head of the state.

b. Strengthen the legislative branch of the government by making the Cabinet collectively responsible to the legislature to assure maximum control over the government by the people.

c. Centralize all executive power in the Cabinet and eliminate the Privy Council and all other extra-constitutional executive bodies that formerly struggled for power.

d. Establish a modified system of checks and balances and establish the independence of the Judiciary.

e. Expand the Bill of Rights and establish safeguards against the invasion of these rights by the state.

f. Strengthen the control of the people over local affairs by providing for election of leading local officials.

4. Principal features of the revision.

a. <u>General comment.</u>

The Japanese Constitution of 1889 was a gift of the Emperor and fixed the principle that the rights of sovereignty are the sole possession of the Emperor and that he is "sacred and inviolable".

One of its most vicious effects was the development of the idea and practice that unprincipled and irresponsible leaders of government could commit all kinds of wrongs in the name of the Emperor and if any unfavorable results followed the Emperor was held blameless as he was sacred and inviolable. The discredited leaders could commit harakiri or vanish from the scene, leaving room for other leaders just as unprincipled to come forward and repeat this nefarious practice.

The present draft establishes for all time that the "Japanese People .... do proclaim the sovereignty of the people's will and do ordain and establish this constitution....." It thus not only guarantees the benefits of a free government to the people but it places full responsibility for that government upon the people. It also declares that the nature, form and continuance of the Imperial institution rests in the hands of the people through their elected Diet.

b. Chapter I, The Emperor.

(1) The Emperor becomes the symbol of the state instead of being the state. He remains as a focus and the center of respect around which the people's thoughts, hopes and ideals can be fused into a cohesive whole, but forever deprived of that mystic power which has been used from time immemorial by unscrupulous leaders to exploit the people to evil ends.

(2) He acts in matters of state only on the advice and with the consent of the Cabinet. No other individuals or organs can advise him on such matters and the struggle for power behind the throne by irresponsible and unrepresentative groups is thereby eliminated.

c. Chapter II, Renunciation of War.

The draft renounces war absolutely as an instrument of national policy and proclaims that hope for survival rests upon the "justice and good faith of the peace-loving peoples of the world." This is so inspired a position with such far reaching implications that uncounted future generations may well come to look upon it with the same reverence as the Magna Charter.

d. Chapter III, Bill of Rights.

This chapter guarantees to all people in Japan the rights of mankind which are recognized as fundamental in a democratic community, and sets forth as well these social and economic principles which have come to be accepted as necessary to the preservation of the dignity of the individual and the welfare of society.

It has been felt necessary to set forth these principles in specific terms in order that they may be fully understood. Their inclusion in the Bill of Rights serves as a mandate to the Diet to enact legislation to carry them into effect. Such provisions for social legislation are widely accepted in Northern European constitutions.

Certain of the provisions are specifically aimed at eliminating anachronistic family customs which tend to perpetuate the feudalistic institutions in Japan.

e. Chapter IV, The Diet.

(1) The Diet becomes absolutely and without qualification truly representative of the people's will. No matter how difficult may be the period of adjustment or accomodation between the Diet and the Executive authority (Cabinet) or how often there may be an appeal to the electorate, the power of government will still remain in the people and this process, even if often repeated, will strengthen them in the habit of exercising self government.

(2) The establishment of a single house is wise and useful because it fixes the responsibility for representative government specifically. There is no need for a House of Peers because the Peerage is abolished. There is no need for establishing the concept of dual representation of state sovereignties and the people as in the United States because there exists no comparable situation here in Japan. The establishment of a second or Upper House not fully representative of the people raises the question of preponderence of authority which has been a source of trouble, irritation and discord, even in England where there is a long and a deep tradition of self government. Japan in adopting a new constitution should avoid the possibility of such a conflict. Where the executive department is fully responsible to the legislative it is less difficult to determine the working relationship between them than under the Bicameral system.

(3) The right of the Diet to meet at will should serve as a check on improper use of executive power while it is not in session. An absolute prohibition of secret sessions, when adopted generally throughout the world, will be a powerful factor in the elimination of the scheming and duplicity which frequently lead to war. The full publicity thus provided will insure the people's will cannot be frustrated without their knowledge.

(4) The power of the Cabinet to dissolve the Diet only upon passage of a formal resolution of non-confidence limits the power to force an election, thereby strengthening the position of the Diet vis-a-vis the Cabinet; gives to the Cabinet the alternative of either resigning or appealing to the people, and maintains Cabinet responsibility to the Diet. Above all, this power tends to induce political responsibility in the Diet under sincere leadership. It is based upon the principle enunciated by James Bryce that "Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them".

f. Chapter V, The Executive.

(1) All executive power is vested in the Cabinet which is collectively responsible to the Diet. Votes of non-confidence involve the Cabinet as a whole and it falls as a body.

(2) The Cabinet must resign whenever a new legislature

is convened thus assuring that the electorate can through the legislative express its disapproval of a Cabinet and act to establish a new one.

(3) The Cabinet is responsible to the Diet in all financial matters. It shall prepare the annual budget for the Diet.

(4) While the Cabinet conducts foreign affairs it shall keep the Diet informed as to the status of such relations. The Diet ratifies or authorizes all international agreements. Secrecy will be abolished in the conduct of Japan's relations with other nations.

(5) Only Cabinet members have the right of access to the Emperor on affairs of state through the Prime Minister and he acts only upon their advice. This prevents irresponsible elements from having access to and influencing the acts of the Emperor.

(6) No lapse occurs in the conduct of the nation's affairs during a change of Cabinet as the outgoing Cabinet remains in power to carry on routine administrative affairs until the new Cabinet is formed and takes its place.

(7) In order to strengthen the close working relationship between the Cabinet and the Diet, the Prime Minister introduces bills on behalf of the Cabinet and all Cabinet members may, whether or not they are members of the Diet, appear on the floor of the Diet to argue bills. All members of the Cabinet must appear before the Diet when called upon to do so to answer interpellations.

(8) The Prime Minister is elected by the Diet. With their advice he appoints the other members of the Cabinet. No member of the Cabinet, including the Prime Minister, is required to be an elected member of the Diet. It is felt that, in the present stage of the development of party politics in Japan, such a requirement would make unnecessarily difficult the speedy formation of a Cabinet. The way is left open, however, for the practice of selecting Cabinet members from the leading party or parties in the Diet to be placed in effect at once or to develop in the course of time.

(9) The Cabinet is not made as powerful as the Cabinet is in Britain; for example, it cannot dissolve the Diet arbitrarily if the Diet blocks its legislative program. The danger in Japan is not a weak executive branch; on the contrary it is the legislative branch which has been traditionally weak. Therefore, the Cabinet has not been given a whip hand.

g. Chapter VI, <u>The Judiciary</u>.

(1) Powers. Most nations do not permit courts to hold legislation unconstitutional. The Japanese courts have been dominated by the procurators and the Ministry of Justice. Personal rights have long been invaded by the police and the procurators. An independent Judiciary as an agent of government has been created in this revised

constitution and has been given the final authority to declare unconstitutional any act of the Diet or other government agency which infringes these rights. However, this constitution has been framed to place ultimate power in the Diet as the elected representative body. In order to avoid a permanent veto power in the court and in order to maintain the predominant powers of government in the legislature on all questions of constitutionality of laws not effecting fundamental human and property rights there has been provided a final review by the Diet. This is a modification of the Parliamentary system under which the legislature is the sole judge of the constitutionality of its enactments.

(2) Appointment. The Supreme Court is appointed for good behavior but the appointment is subject to review by the people when made and at every ten year period thereafter. It is thought that this provision will:

(a) permit the selection of judges by the appointing power to be on the basis of ability but assure to the people the opportunity to recall any judge;

(b) avoid political campaigns between individuals for a position requiring professional skill; and

(c) protect reasonable continuity in office.

(3) The lower courts are appointed for ten year terms. Full freedom of appointment is given the Cabinet, but selection of competent personnel is assured by requiring the Supreme Court to propose persons for each vacancy.

h. Chapter VII, Finance.

(1) The provision in the present Constitution whereby the Government can continue to operate on the preceding year's budget if the Diet fails to pass a new budget has been abolished in this revision and the Diet's approval of the budget is required.

(2) It is provided that the entire income of the Imperial Household shall be turned into the public treasury and the expense of the Imperial Household shall be appropriated by law.

(3) While the Diet may disapprove, reduce, increase or reject any item in the annual budget submitted by the Cabinet it is wisely restrained in financial powers by the stipulation that it shall appropriate no money for any fiscal year in excess of the income, including the proceeds of any borrowings, provided for that period.

(4) Adequate provision is made to cover the situation which may arise should a budget fail to secure parliamentary approval within the fiscal year and yet protect the powers of the Diet over the budget and all appropriations.

i. Chapter VIII, Local Government.

The provisions of this chapter are largely self explanatory. Limited home rule is permitted within the structure of parliamentary government, and local election of local officials is guaranteed.

j. Chapter IX, Amendments.

Amendments to the Constitution shall be initiated by the Diet by a vote of two-thirds of the entire members and shall be submitted to the electorate for ratification.

k. Chapter X, Supreme Law of The Land.

It is provided that the Constitution shall be the supreme law of the land.

l. Chapter XI, Ratification.

It is provided that the Constitution shall be established when ratified by the Diet by a roll-call vote of two-thirds of the members present. A roll-call vote is required in order that the people shall know how their elected representatives have voted. Two-thirds of all the membership has not been required because this would enable a minority to defeat the Constitution, simply by staying away from the session, without voting against ratification.

Upon ratification, the Emperor proclaims the Constitution.

COPY

Constitutional Revision.

Gov't Section (C.W.) C-in-C. 10 Feb 46

1. I transmit herewith draft of a revised Constitution for the Japanese people.

2. This draft represents the considered and collective view of the members of this section representing nearly every form of American political thought, to which I fully subscribe. In its preparation not only has the historic development of the existing Japanese Constitution been fully considered but studious attention has been given to the constitutional principles governing the lives of our own people and the peoples of the several European Nations as well.

3. Through this draft is sought the development of a governmental system in balance as between its several integral parts -- executive, judicial and legislative branches, each independent of the other except for controls necessary to prevent the development of autocratic power in any one, with all left subservient to the people's will as expressed through their duly elected representatives in the Diet.

4. The document embodies those high principles stated by you the other day, and many others which you have from time to time indicated to me. It represents advance thinking in constitutional development -- yet contains no provision without basic precedent or sound considered advocacy. It constitutes a sharp swing from the extreme right in political thinking -- yet yields nothing to the radical concept of the extreme left.

5. In it is sought a restatement of fundamental human rights in language which cannot be misunderstood. By it economic and social as well as political democracy is established.

6. It is submitted as an exploratory work of this section for your consideration and such modification as you deem appropriate prior to its preparation in final form for submission to the Japanese Government. I believe it, in its present form, to be a strong document but a strong document can always be strengthened.

7. Herewith attached is a further explanatory note which goes into the underlying reasoning prompting development of the instrument as a whole and the details of its several provisions.

Incl 1 - Draft of revised Constitution /s/C.W.
2 - Explanatory note. C.W.

Memorandum dated 12 February 1946 to which comments on Matsumoto's "Gist" are attached.

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B-76.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

12 February 1946

MEMORANDUM FOR: Chief, Government Section.

1. Attached herewith are comments on the document "Gist of the Revision of the Constitution" which was informally submitted to you by the Japanese.

2. These critical comments disclose the extent to which the proposed revisions of the Japanese Constitution fail to fulfill the objectives set forth in the Potsdam Declaration with respect to the nature of the government which Japan must establish prior to the withdrawal of the occupation forces.

3. The ten principles under which the comments are made were based upon SWNCC 228 but may be interpreted as being logically derived from the quoted portions of the Potsdam Declaration set forth in the attached document.

4. In view of the provisions included in the draft Constitution prepared by this Section with respect to the renunciation of the right to go to war, no comment has been made on the section "Proposed Revision of the Army and Navy Provisions in the Constitution", included in the second submitted document entitled "General Explanations of the Constitutional Revision Drafted by the Government".

Noted and approved:

GUY H. SWOPE
Comdr., USNR

CHAS L. KADES
Colonel, Inf
Chief, Public Admin. Div.

CYRUS H. PEAKE

FRANK E. HAYS
Lt. Col., Cav

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Comments on the Document
"Gist of the Revision of the Constitution"

The Potsdam Declaration states that, "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established". It further states that the occupying forces of the Allies shall be withdrawn from Japan as soon as the objectives set forth in the Declaration, including the above objectives, have been accomplished and ". . . there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible Government".

In order to fulfill those objectives of the Declaration quoted above the Constitution of Japan should embody the following principles within its provisions. The "comment" which follows the statement of each principle indicates the extent to which the present Constitution or its proposed revision fails to recognize and safeguard these principles. There are other criticisms of the present Constitution and the proposed revision than those set forth below.

1. There should be ". . . established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government". This means that sovereignty is to rest in the people.

Comment:

a. Chapter I, Articles 1 to 6 are revised only to the extent that the word "sacred" in Article 3 is changed to "supreme". This makes no basic change in the concept of sovereignty leaving it wholly vested in the Emperor.

b. No change has been proposed in Article 5 whereby the Emperor continues to exercise the legislative power.

c. The Emperor still can dissolve the House under Article 7, as the revision as proposed (Gist, Par. 2) makes no material change.

2. An executive responsibile to the people in whom should repose the sovereign power.

Comment:

While the proposed change in Article 55 of the Constitution provides for the responsibility of the Cabinet to the House, it is proposed to retain the Privy Council. The Council, in reality a "third house" is a powerful executive organ which once established

by law becomes responsible only to the Emperor and is beyond the reach of the will of the people. Thus the Privy Council can continue to dispute executive power with the Cabinet. Its retention would nullify the significance of the proposed change to Article 55 to make the Cabinet responsible to the House and through the House to the people. No matter how narrowly defined by law the functions of the Council may be it would still enjoy equal access to the Emperor with the Cabinet and be in a powerful advisory position. The Cabinet should be the sole executive organ having access to the Emperor and should be responsible only to the Diet. The proposed revision fails to provide adequately for that situation.

3. A fully representative legislative body with complete power over the budget which shall become effective only with its express approval.

Comment:

a. The proposed revision of Article 67, (Gist, Par. 27) is inadequate as it limits the full power of the legislature over the budget. The legislature should have the power not only to reject or reduce items in the proposed budget but should also be free to increase any item or to add new ones.

b. The proposed change in Article 66 (Gist, Par. 26) still requires the House automatically to approve part of the Imperial Household budget and is an unnecessary restriction upon the full power of the House over control of an annually submitted budget. The entire expenditure of the Imperial Household should be subject to annual appropriations by the Diet.

4. A Bill of Rights which shall cover not only Japanese subjects but all other persons within Japan.

Comment:

Neither in the original Constitution nor in the proposed changes is there adequate recognition of the basic rights of man. The limiting clauses, "according to the provisions of law", "within the limits of the law", etc. may and have been so broadly construed in the past as to restrict and even to deprive the Japanese people of these fundamental rights. Therefore the proposed revisions (Gist, Pars. 8 - 12) are wholly inadequate to guarantee these rights to the Japanese. Aliens are entirely unprotected by the Bill of Rights as the provisions in Chapter II of the Constitution cover only Japanese subjects.

5. Provision for control of local affairs.

Comment:

There is no provision made in the Constitution or in the proposed revision for the right of the people to elect their own local officials and thus make their will more effective in the conduct of local affairs.

6. Adoption of the Constitution and Amendments thereto should be done in such manner as to fully express the will of the people.

Comment:

Under the present Constitution and the proposed revisions (Gist, Pars. 31, 32) the Emperor retains the power to "sanction" and hence veto any amendments passed by the House. The people, acting through their elected members to the legislature should have the full power for initiating and passing upon amendments. The Emperor's action with respect thereto should be limited to the formal promulgation thereof.

7. In order that the people may make effective their will through the legislature no other organ of state can exercise more than a temporary veto over legislative enactments.

Comment:

Under the present Constitution the wide powers reserved to the Emperor and the executive are not clearly enough restricted to assure that acts passed by the legislature shall be promptly promulgated. No change, as appointed above, is proposed in Article 5 by which the Emperor "exercises the legislative power", nor in Article 6 which stipulates that he must give "sanction to laws and orders them to be promulgated and executed". In fact the draft revision may completely frustrate the will of the people by requiring the House to pass "three times in succession by at least two-thirds of all its members"(Gist, Par. 15) a bill vetoed by the House of Senators.

8. The legislative body should be permitted to meet at will.

Comment:

Article 7 of the Constitution authorizes the Emperor to convene, open, close, prorogue, and dissolve the Diet. The draft revision (Gist, Par. 2) does not materially alter the existing restrictions to the Diet meeting at will. Under Article 42 it is provided that the regular Diet session shall be limited to three months. Only by Imperial Order can the session be prolonged. The undesirable subservience of the legislature to the executive is thereby assured.

9. When the Cabinet loses the confidence of the Diet it must either resign or appeal to the electorate.

Comment:

a. The draft revision (Gist, Par. 21) implies that a vote of non-confidence can only be directed against a single Minister of State, thus denying the principle of collective Cabinet responsibility.

b. Furthermore, it provides that if a vote of non-confidence is passed against any Minister "such Minister may not remain in office except in cases where the House has been dissolved". This implies that the House can be dissolved by the executive without a vote of non-confidence against the Cabinet as a whole and is again a denial of the principle of collective Cabinet responsibility, leaving with the executive an excessive coercive power over the Diet by threatening to dissolve it over relatively minor issues affecting only one Ministry.

10. The Emperor should act in all matters of State only on the advice of the Cabinet.

Comment:

Article 55 as it stands, or as revised, (Gist, Par. 20) fails to restrict the power of the Emperor to act only on the advice of the Cabinet. Thus the danger of new quasi-official executive organs developing around and advising the Emperor (i.e., acting in the name of the Emperor) has not been adequately provided against in the proposed revision.

Memorandum dated 12 February 1946 attaching draft Constitution (Copy 22).

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B-81.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

12 February 1946

MEMORANDUM FOR: Chief, Government Section.

Herewith is draft Constitution for Japan prepared by the undersigned with your counsel and leadership.

Steering Committee

Chas. L. Kades, Col. Inf.
Alfred R. Hussey, Comdr. USNR
Milo E. Rowell Lt Col
Ruth A. Ellerman

Civil Rights Committee

Pieter K. Roest, Lt. Col. T.C.
Harry Emerson Wildes

Legislative Committee

Frank E. Hays, Lt Col Cav.
Guy J. Swope, Comdr. USNR.
Osborne Hauge, Lt(A) USNR
Gertrude Norman

Local Government Committee

Cecil G. Tilton, Major, Spec.
Roy L. Malcolm, Lt. Comdr. USNR

Executive Committee

Cyrus H. Peake
Paul I. Miller

Finance Committee

Frank Rizzo Capt. CMP

Judiciary Committee

Milo E. Rowell Lt Col
Alfred R. Hussey, Comdr. USNR
Margaret Stone

Emperor, Treaties and Enabling Committee

Richard A. Poole, Ens. USNR
George A. Nelson, Jr., 1st Lt

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CONSTITUTION OF JAPAN

We, the Japanese People, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, ordinances, laws and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance, for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese People, pledge our national honor, determined will and full resources.

CHAPTER I

The Emperor

Article I. The Emperor shall be the symbol of the State and of the Unity of the People, deriving his position from the sovereign will of the People, and from no other source.

Article II. Succession to the Imperial Throne shall be dynastic and in accordance with such Imperial House Law as the Diet may enact.

Article III. The advice and consent of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

The Emperor shall perform only such state functions as are provided for in this Constitution. He shall have no governmental powers, nor shall he assume nor be granted such powers.

The Emperor may delegate his functions in such manner as may be provided by law.

Article IV. When a regency is instituted in conformity with the provisions of such Imperial House Law as the Diet may enact, the duties of the Emperor shall be performed by the Regent in the name of the Emperor; and the limitations on the functions of the Emperor contained herein shall apply with equal force to the Regent.

Article V. The Emperor appoints as Prime Minister the person designated by the Diet.

Article VI. Acting only on the advice and with the consent of the Cabinet, the Emperor, on behalf of the people, shall perform the following state functions:

Affix his official seal to and proclaim all laws enacted by the Diet, all Cabinet orders, all amendments to

this Constitution, and all treaties and international conventions;

Convoke sessions of the Diet;

Dissolve the Diet;

Proclaim general elections;

Attest the appointment or commission and resignation or dismissal of Ministers of State, ambassadors and those other state officials whose appointment or commission and resignation or dismissal may by law be attested in this manner;

Attest grants of amnesty, pardons, commutation of punishment, reprieves and rehabilitation;

Award honors;

Receive ambassadors and ministers of foreign States; and

Perform appropriate ceremonial functions.

Article VII No grants of money or other property shall be made to the Imperial Throne, and no expenditures shall be made by the Imperial Throne, unless authorized by the Diet.

CHAPTER II

Renunciation of War

Article VIII. War as a sovereign right of the nation is abolished. The threat or use of force is forever renounced as a means for settling disputes with any other nation.

No army, navy, air force, or other war potential will ever be authorized and no rights of belligerency will ever be conferred upon the State.

CHAPTER III

Rights and Duties of the People

Article IX. The people of Japan are entitled to the enjoyment without interference of all fundamental human rights.

Article X. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article XI. The freedoms, rights and opportunities enunciated by this Constitution are maintained by the eternal vigilance of the people and involve an obligation on the part of the people to prevent their abuse and to employ them always for the common good.

Article XII. The feudal system of Japan shall cease. All Japanese by virtue of their humanity shall be respected as individuals. Their right to life, liberty and the pursuit of happiness within the limits of the general welfare shall be the supreme consideration of all law and of all governmental action.

Article XIII. All natural persons are equal before the law. No discrimination shall be authorized or tolerated in political, economic or social relations on account of race, creed, sex, social status, caste or national origin.

No patent of nobility shall from this time forth embody within itself any national or civic power of government.

No rights of peerage except those of the Imperial dynasty shall extend beyond the lives of those now in being.

No special privilege shall accompany any award of honor, decoration or other distinction; nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people are the ultimate arbiters of their government and of the Imperial Throne. They have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special groups.

In all elections, secrecy of the ballot shall be kept inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of grievances for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. Aliens shall be entitled to the equal protection of law.

Article XVII. No person shall be held in enslavement, serfdom or bondage of any kind. Involuntary servitude, except as a punishment for crime, is prohibited.

Article XVIII. Freedom of thought and conscience shall be held inviolable.

Article XIX. Freedom of religion is guaranteed to all. No religious organization shall receive special privileges from the State, nor exercise political authority.

No person shall be compelled to take part in any religious acts, celebrations, rites or practices.

The State and its organs shall refrain from religious education or any other religious activity.

Article XX. Freedom of assembly, speech and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XXI. Freedom of association, movement and choice of abode are guaranteed to every person to the extent they do not conflict with the general welfare.

All persons shall be free to emigrate and to change their nationality.

Article XXII. Academic freedom and choice of occupation are guaranteed.

Article XXIII. The family is the basis of human society and its traditions for good or evil permeate the nation. Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion, and maintained through cooperation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIV. In all spheres of life, laws shall be designed for the promotion and extension of social welfare, and of freedom, justice and democracy.

Free, universal and compulsory education shall be established.

The exploitation of children shall be prohibited.

The public health shall be promoted.

Social security shall be provided.

Standards for working conditions, wages and hours shall be fixed.

Article XXV. All men have the right to work.

Article XXVI. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare.

Article XXVIII. The ultimate fee to the land and to all natural resources reposes in the State as the collective representative of the people. Land and other natural resources are subject to the right of the State to take them, upon just compensation therefor, for the purpose of securing and promoting the conservation, development, utilization and control thereof.

Article XXIX. Ownership of property imposes obligations. Its use shall be in the public good. Private property may be taken by the State for public use upon just compensation therefor.

Article XXX. No person shall be apprehended except upon warrant issued by a competent officer of a court of law specifying the offense upon which the person is charged, unless he is apprehended while committing a crime.

Article XXXI. No person shall be arrested or detained without being at once informed of the charges against him nor without the immediate privilege of counsel; he shall not be held incommunicado; he shall not be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXII. No person shall be deprived of life or liberty, nor shall any criminal penalty be imposed, except according to procedures established by the Diet, nor shall any person be denied the right of appeal to the courts.

Article XXXIII. The right of the people to be secure in their persons, homes, papers and effects against entries, searches and seizures shall not be impaired except upon judicial warrant issued only for probable cause, and particularly describing the place to be searched and the person or things to be seized.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent officer of a court of law.

Article XXXIV. The infliction of torture by any public officer is absolutely forbidden.

Article XXXV. Excessive bail shall not be required, nor cruel or unusual punishments inflicted.

Article XXXVI. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to cross-examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article XXXVII. No person shall be declared guilty of a crime except by a court of competent jurisdiction.

No person shall be twice placed in jeopardy for the same offense.

Article XXXVIII. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXIX. No person shall be held criminally liable for an act lawful at the time it was committed.

CHAPTER IV

The Diet

Article XL. The Diet shall be the highest organ of state power and shall be the sole law-making authority of the State.

Article XLI. The Diet shall consist of one House of elected representatives with a membership of not less than 300 nor more than 500.

Article XLII. The qualifications of electors and of candidates for election to the Diet shall be determined by law, and in determining such qualifications there shall be no discrimination because of sex, race, creed, color or social status.

Article XLIII. Members of the Diet shall receive adequate compensation from the national treasury as determined by law.

Article XLIV. Members of the Diet shall in all cases, except those specified by law, be free from arrest while attending the sessions of the Diet or while travelling to and from such sessions; and for any speech, debate, or vote in the Diet, they shall not be held legally liable elsewhere.

Article XLV. The term of the members shall be four years, but it may be terminated at an earlier date by dissolution of the Diet as provided herein.

Article XLVI. The method of election, apportionment, and voting shall be determined by law.

Article XLVII. The Diet shall convene at least once in every year.

Article XLVIII. The Cabinet may call special sessions and shall do so on petition of not less than twenty per cent of the members of the Diet.

Article XLVIX. The Diet shall be the sole judge of the elections and the qualifications of its members. The denial of a seat to anyone who is certified to have been elected and whose right to the seat has been questioned shall require the vote of a majority of the members present.

Article L. A quorum to transact business shall consist of not less than one-third of all the members. Except as otherwise provided herein all actions of the Diet shall be by majority vote of those present. In case of a tie the presiding officer shall cast the deciding vote.

Article LI. The Diet shall choose its presiding officer and other officials. It may determine the rules of its proceedings, punish members for disorderly behavior and expel them. On a motion for expulsion of a member a vote of not less than two-thirds of the members present shall be required to effect such expulsion.

Article LII. No law shall be passed except by bill.

Article LIII. The deliberations of the Diet shall be public, and no secret sessions shall be held. The Diet shall maintain and publish a record of its proceedings and this record shall be made available to the public. The individual votes of members on any question shall be recorded in the journal upon the demand of twenty per cent of those present.

Article LIV. The Diet shall have the power to conduct investigations, to compel the attendance and testimony of withesses and the production of records, and to punish for refusal to comply.

Article LV. The Diet by a majority vote of those present shall designate the Prime Minister. The designation of a Prime Minister shall take precedence over all other business of the Diet.

The Diet shall establish the several Ministries of State.

Article LVI. The Prime Minister and the Ministers of State whether or not they hold seats in the Diet may at any time appear before that body for the purpose of presenting and arguing bills, and shall appear when required to answer interpellations.

Article LVII. Withingten days after the passage of a resolution of non-confidence or the failure to pass a resolution of confidence by a majority of the total membership of the Diet, the Cabinet shall resign or order the Diet to dissolve. When the Diet has been ordered dissolved a special election of a new Diet shall be held not less than thirty days nor more than forty days after the date of dissolution. The newly elected Diet shall be convoked within thirty days after the date of election.

Article LVIII. The Diet shall constitute from among its members a court of impeachment to try members of the judiciary against whom removal proceedings have been instituted.

Article LIX. The Diet shall enact all laws necessary and proper to carry into execution the provisions of this Constitution.

CHAPTER V

The Cabinet

Article LX. The executive power is vested in a Cabinet.

Article LXI. The Cabinet consists of a Prime Minister, who is its head, and such other Ministers of State as may be authorized by the Diet.

In the exercise of the executive power, the Cabinet is collectively responsible to the Diet.

Article LXII. The Prime Minister shall with the advice and consent of the Diet appoint Ministers of State.

The Prime Minister may remove individual Ministers at will.

Article LXIII. Whenever a vacancy occurs in the office of Prime Minister or upon the convening of a new Diet, the Cabinet shall collectively resign and a new Prime Minister shall be designated.

Pending such designation, the Cabinet shall continue to perform its duties.

Article LXIV. The Prime Minister introduces bills on behalf of the Cabinet, reports to the Diet on general affairs of State and the status of foreign relations, and exercises control and supervision over the several executive departments and agencies.

Article LXV. In addition to other executive responsibilities, the Cabinet shall:

Faithfully execute the laws and administer the affairs of State;

Conduct foreign relations;

Conclude such treaties, international conventions and agreements with the consent of the Diet by prior authorization or subsequent ratification as it deems in the public interest;

Administer the civil service according to standards established by the Diet;

Prepare and submit to the Diet an annual budget;

Issue orders and regulations to carry out the provisions of this Constitution and the law, but no such order or regulation shall contain a penal provision; and

Grant amnesty, pardon, commutation of punishment, reprieve and rehabilitation.

Article LXVI. The competent Minister of State shall sign and the Prime Minister shall countersign all acts of the Diet and executive orders.

Article LXVII. Cabinet Ministers shall not be subject to judicial process during their tenure of office without the consent of the Prime Minister, but no right of action shall be impaired by reason hereof.

CHAPTER VI

Judiciary.

Article LXVIII. A strong and independent judiciary being the bulwark of the people's rights, the whole judicial power is vested in a Supreme Court and in such inferior courts as the Diet shall from time to time establish.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXIX. The Supreme Court is vested with the rule-making power under which it determines the rules of practice and of procedure, the admission of attorneys, the internal discipline of the courts, the administration of judicial affairs, and such other matters as may properly affect the free exercise of the judicial power.

Public procurators shall be officers of the court and subject to its rule-making power.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXX. Removals of judges shall be accomplished by public impeachment only and no disciplinary action shall be administered them by any executive organ or agency.

Article LXXI. The Supreme Court shall consist of a chief justice and such number of associate justices as may be determined by the Diet. All such justices shall be appointed by the Cabinet and shall hold office during good behavior but not after the attainment of the age of 70 years, provided however that all such appointments shall be reviewed at the first general election held

election held immediately following the expiration of ten calendar years from the next prior confirmation. Upon a majority vote of the electorate not to retain the incumbent the office shall become vacant.

All such justices shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXII. The judges of the inferior courts shall be appointed by the Cabinet from a list which for each vacancy shall contain the names of at least two persons nominated by the Supreme Court. All such justices shall hold office for a term of ten years with privilege of reappointment and shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office. No judge shall hold office after attaining the age of 70 years.

Article LXXIII. The Supreme Court is the court of last resort. Where the determination of the constitutionality of any law, order, regulation or official act is in question, the judgment of the Supreme Court in all cases arising under or involving Chapter III of this Constitution is final; in all other cases where determination of the constitutionality of any law, ordinance, regulation or official act is in question, the judgment of the Court is subject to review by the Diet.

A judgment of the Supreme Court which is subject to review may be set aside only by the concurring vote of two-thirds of the whole number of representatives of the Diet. The Diet shall establish rules of procedure for reviewing decisions of the Supreme Court.

Article LXXIV. In all cases affecting ambassadors, ministers and consuls of foreign states, the Supreme Court has exclusive original jurisdiction.

Article LXXV. Trials shall be conducted and judgment declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses of the press, and cases wherein the rights of citizens as reserved in Chapter III of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER VII

Finance

Article LXXVI. The power to levy taxes, borrow money, appropriate funds, issue and regulate the value of coins and currency shall be exercised through the Diet.

Article LXXVII. No new taxes shall be imposed or existing ones modified except by action of the Diet or under such conditions as the Diet may prescribe.

All taxes in effect at the time this Constitution is promulgated shall continue to be collected under existing regulations until changed or modified by the Diet.

Article LXXVIII. No contract shall be entered into in the absence of an appropriation therefor, nor shall the credit of the State be pledged except as authorized by the Diet.

Article LXXIX. The Cabinet shall prepare and submit to the Diet an annual budget setting forth the complete government fiscal program for the next ensuing fiscal year, including all proposed expenditures, anticipated revenues and borrowings.

Article LXXX. The Diet may disapprove, reduce, increase or reject any item in the budget or add new items.

The Diet shall appropriate no money for any fiscal year in excess of the anticipated income for that period, including

the proceeds of any borrowings.

Article LXXXI. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized to be expended under the direct supervision of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXII. All property of the Imperial Household, other than the hereditary estates, shall belong to the nation. The income from all Imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXIII. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of the State.

Article LXXXIV. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be determined by the Diet.

Article LXXXV. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of public finances.

CHAPTER VIII

Local Government

Article LXXXVI. The governors of prefectures, the mayors of cities and towns and the chief executive officers of all other subordinate bodies politic and corporate

having taxing power, the members of prefectural and local legislative assemblies, and such other prefectural and local officials as the Diet may determine, shall be elected by direct popular vote within their several communities.

Article LXXXVII. The inhabitants of metropolitan areas, cities and towns shall be secure in their right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article LXXXVIII. The Diet shall pass no local or special act applicable to a metropolitan area, city or town where a general act can be made applicable, unless it be made subject to the acceptance of a majority of the electorate of such community.

CHAPTER IX

Amendments

Article LXXXIX. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all its members, and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor, in the name of the People, as an integral part of this Constitution.

CHAPTER X

Supreme Law

Article XC. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the nation, and no public law or ordinance and no imperial rescript or other governmental act, or part thereof, contrary to the provisions hereof shall have legal force or validity.

Article XCI. The Emperor, upon succeeding to the Throne, and the Regent, Ministers of State, Members of the Diet, Members of the Judiciary and all other public officers upon assuming office, shall be bound to uphold and protect this Constitution.

All public officials duly holding office when this Constitution takes effect shall likewise be so bound and shall remain in office until their successors are elected or appointed.

CHAPTER XI

Ratification

Article XCII. This Constitution shall be established when ratified by the Diet by roll-call vote of two-thirds of the members present.

Upon ratification by the Diet, the Emperor shall immediately proclaim, in the name of the People, that this Constitution has been established as the supreme law of the nation.

Check sheet dated 12 February 1946 transmitting copies 1 and 2 of proposed Constitution.

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B-102.1

Subject: Proposed Constitution
for Japan.

From: C. W. To: C-in-C 12 Feb. 46

1. Herewith for your files are copies 1 & 2 of the proposed Constitution for Japan. Included with copy No. 1 are the original explanatory notes which accompanied the draft of this instrument submitted for your consideration.

2. You will be interested in knowing that the article concerning which you entertained doubt was submitted by the Committee on Civil Rights. All members of the Steering Committee (Col. Kades, Lt. Col. Rowell and Commander Hussey) were opposed intially to the inclusion of this article but accepted it in very much more moderate form than was originally proposed. They tell me that last night, while awaiting my return from your office, they discussed this very article further and agreed that it was definitely a weak point in the constitutional draft. They were obviously delighted with its removal from the completed document.

3. My appointment with members of the Cabinet is set for 10 o'clock tomorrow morning at the official residence of the Foreign Minister.

C. W.

Memorandum recording events on 13 February 1946.

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B-103.1

RECORD OF EVENTS ON 13 FEBRUARY 1946 WHEN PROPOSED NEW CONSTITUTION FOR JAPAN WAS SUBMITTED TO THE FOREIGN MINISTER, MR. YOSHIDA, IN BEHALF OF THE SUPREME COMMANDER.

The undersigned, accompanying General Whitney, arrived at the official residence of the Foreign Minister at 10:00 a.m. sharp. We were ushered by Mr. Shirasu, Assistant to the Foreign Minister, through to a sun-porch where we found awaiting us Mr. Yoshida, the Foreign Minister, Dr. Matsumoto, Minister without Portfolio and Chairman, Constitution Revision Committee of the Cabinet, and Mr. Hasegawa of the Foreign Office, who interpreted. The table from which they had just arisen was littered with papers and notes, apparently referring to the Matsumoto draft constitution which had been previously submitted for General Whitney's consideration.

General Whitney sat with his back to the sun, affording best light on the countenances of the Japanese present who sat opposite him. The undersigned sat next to General Whitney also facing the Japanese. General Whitney at once throttled any discussion of the Matsumoto draft by saying slowly, weighing every word: "The draft of constitutional revision, which you submitted to us the other day, is wholly unacceptable to the Supreme Commander as a document of freedom and democracy. The Supreme Commander, however, being fully conscious of the desperate need of the people of Japan for a liberal and enlightened Constitution that will defend them from the injustices and the arbitrary controls of the past, has approved this document and directed that I present it to you as one embodying the principles which in his opinion the situation in Japan demands. In order that you gentlemen may understand fully the contents of the document to which I will hereafter further allude, my officers and I will now withdraw to permit you freely to examine and discuss the same."

At this statement of General Whitney, the Japanese officials were obviously stunned -- Mr. Yoshida's face particularly manifesting shock and concern. The whole atmosphere at this point was charged with dramatic tenseness.

General Whitney then turned to the undersigned and requested the drafts of the Constitution. Copy No. 6 was handed to Mr. Yoshida, copy No. 7 to Dr. Matsumoto, copy No. 8 to Mr. Hasegawa, and copies Nos. 9 to 20 inclusive, were given to Mr. Shirasu who signed a receipt for all of them.

At 10:10 o'clock General Whitney and the undersigned left the porch and went out into the sunshine of the garden as an American plane passed over the house. After about fifteen minutes Mr. Shirasu joined us, whereupon General Whitney quietly observed to him: "We are out here enjoying the warmth of atomic energy".

It was observed that before Mr. Shirasu left the sun-porch each member of the Japanese party had read the draft Constitution closely, and that Mr. Yoshida and Dr. Matsumoto would refer to various parts of the draft and confer concerning the proposal.

At 10:40 o'clock Mr. Shirasu was called back into the conference of the two ministers and a few minutes later came out to inform us that the ministers were ready, whereupon we re-entered the porch and resumed our original places.

Through his interpreter Dr. Matsumoto said that he had read the draft and understood it but that it was so vastly different from their own draft that it would be necessary to present it to the Prime Minister before any statement could be made by him.

At this time it was noted that Dr. Matsumoto's explanatory notes on his own draft had all been picked up and put back into an envelope and that they were not again touched during the conference. The face of the Foreign Minister was dark and grim and his expression did not change during the balance of the conference while General Whitney talked. The face of the interpreter remained a complete blank during the entire proceedings. However, it was observed that he was having physical difficulty in speaking and constantly wet his lips. Dr. Matsumoto listened to everything which was said by General Whitney with the utmost concentration but he kept looking at the other members of our group and never directly at General Whitney. Mr. Yoshida gazed intently at General Whitney with an occasional side glance that swung until it would reach the eyes of one of the undersigned, when it would immediately shift back. During the remarks of General Whitney, Mr. Shirasu scribbled copious notes with a pencil.

After Dr. Matsumoto's opening remarks concerning his complete understanding of the draft Constitution, General Whitney said that he would speak very slowly and that if Dr. Matsumoto did not understand him at any point he would welcome interruptions because he wanted to be certain that Dr. Matsumoto, as well as Mr. Yoshida, understood every word that General Whitney uttered. Before the interpreter could interpret this to Dr. Matsumoto, Dr. Matsumoto said that he understood what General Whitney was saying but he would like to know if there were available any written explanations of the Constitution. General Whitney replied that there were no written explanations available, but that the instrument by its terms was so clear that it was hardly susceptible to misunderstanding and that it spoke for itself.

General Whitney then proceeded: "Now that you are familiar with the contents of this instrument, gentlemen, and in keeping with my hope that all of us will place our cards face up on the table, I want to explain to you somewhat of the spirit and the considerations which have prompted the Supreme Commander to submit this document to you. He has observed various party platforms recently published having for their primary purpose constitutional reform, and he has observed a growing consciousness on the part of the people of the need for constitutional reform. It is his purpose to see that the people get constitutional reform.

"As you may or may not know, the Supreme Commander has been unyielding in his defence of your Emperor against increasing pressure from the outside to render him subject to war criminal investigation. He has thus defended the Emperor because he considered that that was the cause of right and justice, and will continue along that course to the extent of his ability. But, gentlemen, the Supreme Commander is not omnipotent. He feels, however, that acceptance of the provisions of this new Constitution would render the Emperor practically unassailable. He feels that it would bring much closer the day of your freedom from control by the Allied Powers, and that it would provide your people with the essential freedoms which the Allied Powers demand in their behalf.

"The Supreme Commander has directed me to offer this Constitution to your government and party for your adoption and your presentation to the people with his full backing if you care to do so, yet he does not require this of you. He is determined, however, that the principles therein stated shall be laid before the people -- rather by you -- but, if not, by himself. By this instrument he has thus, gentlemen, offered Japan, a nation in defeat, the opportunity to assume moral leadership among the other nations of the world toward lasting peace.

"General MacArthur feels that this is the last opportunity for the conservative group, considered by many to be reactionary, to remain in power; that this can only be done by a sharp swing to the left; and that if you accept this Constitution you can be sure that the Supreme Commander will support your position. I cannot emphasize too strongly that the acceptance of the draft Constitution is your only hope of survival, and that the Supreme Commander is determined that the people of Japan shall be free to choose between this Constitution and any form of Constitution which does not embody these principles."

During all the time that General Whitney talked, Mr. Yoshida rubbed the palms of his hands slowly, back and forth, along his trousers. General Whitney spoke with great deliberation, intense conviction, and with a profound solemnity which obviously made a deep impression upon the Japanese party. As he concluded, General Whitney observed that Dr. Matsumoto had not once been required to resort to the use of his interpreter in order to understand his remarks. Dr. Matsumoto replied that he understood fully all that General Whitney had said but that he could not answer General Whitney until the matter had been brought to the attention of the Prime Minister and he had had an opportunity to consider and discuss the draft Constitution. However, Dr. Matsumoto said that there was one point upon which he was not clear. Through his interpreter Dr. Matsumoto then discussed the provision for a unicameral legislature.

Dr. Matsumoto, pointing to the provision in the draft Constitution concerning the Diet, said that he noted that a single House was provided for and that, since this was so completely foreign to the historic development of the Japanese legislative body, he wondered what thoughts had actuated this provision.

General Whitney replied that, in view of the expected abolition of the Peerage, a House of Peers was unnecessary and that it was thought that a single House legislative body under the checks and balances set up in other parts of the Constitution provided the simplest form for adoption; that the situation in Japan was not comparable to that in the United States where the Senate was established for the purpose of giving the citizens of the several states, regardless of size or population, equal representation as a check upon the political control by majority representation in the House of Representatives of the larger and more populated states.

Dr. Matsumoto then said that most other countries have a two House system to give stability to the operation of the legislature. If, however, only one House existed, said Dr. Matsumoto, one party will get a majority and go to an extreme and then another party will come in and go to the opposite extreme so that, having a second House would provide stability and continuity to the policies of the government. General Whitney then said that the Supreme Commander would give thoughtful consideration to any point such as that made by Dr. Matsumoto which would lend support to a bicameral legislature and that, so long as the basic principles set forth in the draft Constitution were not impaired, his views would be fully discussed. General Whitney reiterated that it was not his intention to imply that the draft Constitution must be accepted in its entirety but only that all of the basic principles contained in the document must also be provided for in any Constitution that the Supreme Commander would support. Dr. Matsumoto then said that he thought the discussion had gone as far as it could to-day.

The Foreign Minister, Mr. Yoshida, thereupon addressing himself to General Whitney stated that it would be necessary to present the entire matter to the Prime Minister, and that he would like to arrange a further meeting on the question after the Prime Minister and the Cabinet had been consulted. General Whitney then stated: "Mr. Minister, your desire to present this matter to other members of your government and for the time with which to study the several provisions is, of course, understandable and I have every confidence that it is as much your wish as it is that of the Supreme Commander that this matter be given preferential treatment over all other business. The Supreme Commander is determined that this constitutional issue shall be brought before the people well in advance of the general election and that they shall have full opportunity freely to express their will on constitutional reform. General MacArthur is prepared, as I stated before, to leave the sponsorship of the document to your government with his firm approval, but failing in that, if necessary, he is prepared to lay it before the people himself. This Constitution represents the principles which the Supreme Commander and the Allied Powers are willing to accept as a basis for the government of Japan because the principles enunciated in this document provide a basis for free democratic government in Japan and for carrying out the terms of the Potsdam Declaration."

Turning to the undersigned, General Whitney asked if there was anything we desired to add and, upon receiving negative replies, General Whitney said to Mr. Yoshida: "For your convenience, I have left with you fifteen copies of the document and shall await your pleasure as to our next meeting. I assure you that my officers and I will hold ourselves entirely in readiness to meet your convenience."

The Foreign Minister then stated that he hoped we would preserve secrecy in the matter, to which General Whitney replied: "Secrecy, Mr. Minister, has throughout been preserved as it will continue to be, for your convenience and protection, not for that of the Supreme Commander. Good-day, gentlemen, thank you for this privilege of meeting with you. I shall expect to hear from you later."

As General Whitney rose to depart he asked Mr. Shirasu for his hat and gloves. Mr. Shirasu, who is normally a very calm and debonair person, was so flustered that he first started for an anteroom near the entrance of the house and then, remembering that he had placed our caps and gloves in the library adjacent to the sun-porch, rushed back again, procured General Whitney's cap and gloves and showed visible indication of extreme nervousness as he handed them to General Whitney.

Whereupon at 11:10 o'clock the undersigned accompanied General Whitney from the premises.

Charles L. Kades
Col. Inf.

Milo E. Rowell
Lt Col AUS

Alfred R. Hussey
Comdr. USNR

Japanese Receipt for draft Constitution numbered 6 to 20 (both inclusive).

12

B-108.1

12

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

13 February 1946

Received from Colonel Chas L. Kades fifteen (15) copies, numbered 6 to 20 (both inclusive) of draft Constitution of Japan.

15

Copy of Jeep-Way letter dated February 15th, 1946.

13

B-109.1

THE GAIMUSHO
TOKYO

13

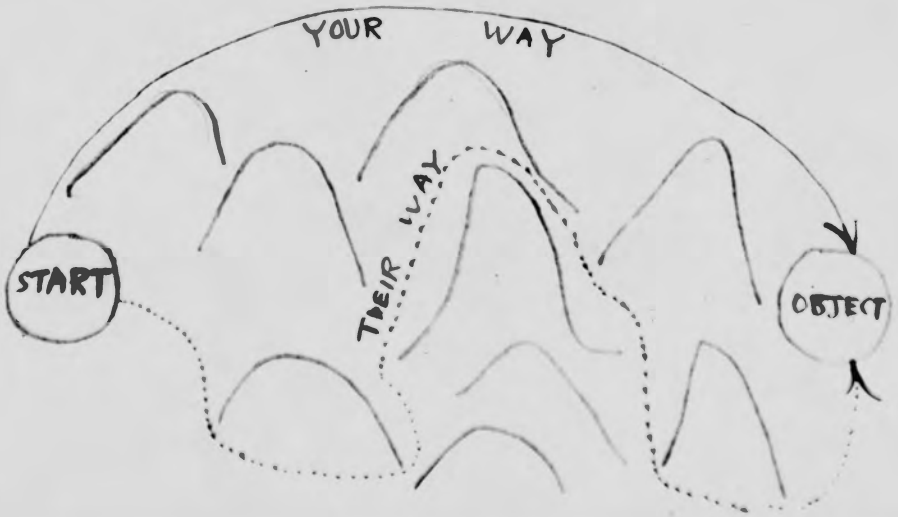
February 15th, 1946.

Brig. General C. Whitney,
The Government Section,
G. H. Q.,
Tokyo.

My dear General,

As you seemed to have been a little interested in my few remarks, when I ran into you at the G. H. Q. building yesterday, I venture to write you, at random, more of my impressions about the way your draft was received by Dr. Matsumoto and others in the Cabinet.

I must say your draft was more than a little shock to them. Dr. Matsumoto was quite a socialist in his young days and still is a whole hearted liberal. Notwithstanding the doctor's qualifications (none could survive his term of a law professorship , the leading one at that !, if easily shocked and surprised !) your draft came as a great surprise. He realises that the object of your draft and his "revision" is one and the same in spirit. He is as anxious as you are, if not more as after all this is his country, that this country should be placed on a constitutional and democratic basis once for all as he has always deplored the unconstitutionality of the nation. He and his colleagues feel that yours and theirs aim at the same destination but there is this great difference in the routes chosen. Your way is so American in the way that it is straight and direct. Their way must be Japanese in the way that it is round about, twisted and narrow. Your way may be called an Airway and their way Jeep way over bumpy roads. (I know the roads are bumpy !) Dr. Matsumoto described his impressions as under:-



15

THE GAIMUSHO
TOKYO

I think I appreciate your standpoint well and I must confess I have a great admiration for it as I have for so many things American. I still am an ardent admirer of Lindbergh's flight across the "uncharted" Atlantic, for the first time and unaided. But Alas! Lindberghs are so rare and far between even in America. I do not know if we ever had one in this country.

At the same time, I see their viewpoint too. Theirs is not a party government. They have no means of knowing how much they can count on the support of the people. They see the papers every day and read about extreme leftish outbursts. But on the other hand, they know only too well a great majority of the people are enthusiastically opposed to communism and devotedly for the Emperor. They are afraid that any revision presented in a "drastic" form will only be jeered out of the House, thereby accomplishing nothing. They feel that they must approach it carefully and slowly. They still vividly remember the days of party politics in this country. Granted the parties were often short sighted and corrupt but what they then considered "democratic principle" prevailed everywhere. All over the country, the soldiers were very much looked down on and the fever attained such a height finally that no officer ever dared to ride a street car with his sabre dangling on. The budgets were cut down left and right on armaments. Sure enough, the acute reactions set in and the militarism you know so much about appeared on the scene. They fear that too complete a reform all at once would only invite too extreme a reaction and they are most anxious to avoid it.

I think they are all unanimous in the feeling that once the right to initiate revisions is invested in the House, and not in the Emperor, the battle is nearly won and succeeding governments could revise it as much as they wished according to the will of the people.

I am afraid I have already accelerated the paper shortage by writing this mumble but I know you will forgive me for my shortcoming for which my late father is also partly responsible !

Most sincerely yours,

Jiro Shirasu

Reply to Jeep-Way letter dated 16 February 1946.

14

B-111.1

16 February 1946.

Dear Mr. Shirasu:

I am in receipt of your letter of the 15th and appreciate your frank statement concerning the reaction of Dr. Matsumoto and his colleagues to the proposed new constitution which I submitted to the meeting of ministers at the Supreme Commander's direction on the 13th.

As I told you when we met in this headquarters on the afternoon of that same day, I am delighted that Dr. Matsumoto is in full agreement with the objectives sought in the referenced document. It discloses that he is guided by a quality of far sighted statesmanship of which the Japanese people are in urgent need during this period of their history. It remains to be seen whether he and his colleagues have, in addition, the moral courage faithfully and aggressively to sponsor the reforms concerning which they thus have no quarrel — whether they themselves are destined now to champion these rights and liberties which they agree with the Supreme Commander must be bestowed upon the people if, upon the disastrous errors of the past, is to be erected a new and enlightened Japan charted to the path of peace and dedicated to upholding the rights of man in the fraternity of nations — or whether they must yield to others who do possess those necessary qualities of leadership.

I quite understand your graphic portrayal of the distinction in the manner in which your countrymen and mine traditionally approach a common objective — possibly more than to all else, to that distinction may be charged Japan's present plight — but Dr. Matsumoto and his colleagues appear completely to lose sight of the fact that in the attainment of that common objective sought by constitutional reform, those who sponsor the principles as stated by the Supreme Commander in his referenced document do so with his firm support, which in turn elevates the sponsorship well above party or other local political considerations. With that support they can be assured that the objectives may be reached promptly and directly, and without either adverse effect upon the orderly processes of civil government nor dislocation in the lives of the people. That the Diet would receive the instrument in the manner you suggest if it bear the stamp of joint approval both by the Government and the Supreme Commander is unthinkable.

The Supreme Commander, in full appreciation of the traditional place which the Emperor occupies in the hearts of the people, has precisely sought by the instrument to leave both himself and his dynasty in a position

of dignity, honor and respect, while at the same time placing the ultimate political power in the hands of the people where we all agree it inevitably must rest. It is to ensure that these objectives are understood by the people that the Supreme Commander is determined that they be fully informed of the political reforms which they of right may expect, prior to the next general elections — that the new Diet may assume its responsibilities with their full opportunity of expression thereon.

The document in reference is by its terms clear and succinct and susceptible to no misunderstanding. While the Supreme Commander is not dogmatically opposed to minor changes in the language used or procedure provided, the better to bring it within the understanding of and application by the Japanese people, he will not compromise it — either in principle or basic form. He will not yield to unnecessary delay.

As I stated to the ministers on the 13th, the Supreme Commander through that document not only provides for the Japanese people those fundamental human rights which in the growing consciousness of mankind are now demanded by all peoples, but by the same instrument affords Japan, a nation in the agony of defeat, an opportunity to assume moral leadership among other nations of the world.

On the other hand it must be realized that the matter of constitutional reform in Japan is not confined to the exclusive interest of the Japanese people or even to them jointly with the Supreme Commander, but rather is it the opinion of the world which must be fully satisfied before the Allied Powers will release their complete control over Japan. In the final analysis, unless this issue is met forthrightly by the Japanese Government or the Supreme Commander himself takes action, it is quite possible that a constitution might be forced upon Japan from the outside which would render the term "drastic", as used by you in your letter to describe the document submitted by me on the 13th, far too moderate a term with which to describe such new constitution — a constitution which well might sweep away even those traditions and structures which the Supreme Commander by his instrument makes it possible to preserve.

Again let me thank you for the spirit which prompted the frank expressions contained in your letter of the 15th.

Faithfully yours,

COURTNEY WHITNEY,
Brigadier General, U.S. Army.

Mr. Jiro Shirasu,
Tokyo.

Memorandum for Record dated 18 February 1946.

15

B-113.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

18 February 1946

MEMORANDUM FOR THE RECORD:

SUBJECT: "Supplementary Explanation of Proposed Constitutional Revision" presented by Mr. Shirasu.

1. Attached is a letter from Dr. Matsumoto, (Minister without Portfolio and Chairman of the Cabinet Constitutional Revision Committee,) inclosing a "Supplementary Explanation" concerning his proposed constitutional revision. The letter and explanation were delivered personally to the Chief, Government Section by Mr. Jiro Shirasu (close associate of Foreign Minister Yoshida) at 1530 hours today.

2. The "Supplementary Explanation" consists of an argument in favor of the Matsumoto draft constitution, and against the draft constitution which was submitted to Matsumoto and Yoshida on 13 February. The gist is an argument that the Matsumoto draft constitution "is a tablet, sugar coated, for the benefit of the masses" but not too "fundamental or radical" so as to "shock the moderates, and cause them to assume an antagonistic attitude toward democracy itself". Dr. Matsumoto points to the Weimar Constitution of 1919 as proving "conclusively the fact that the constitution of a country can achieve

the desired ends only when it is adapted to its natural circumstances".

3. The Matsumoto memorandum is frivolous in concept, contentious in tone, and calculated to probe our lines to determine whether we meant what we said at the conference at the Foreign Ministers. He goes to the extreme in this memorandum of correcting typographical mistakes in his original memorandum, explaining the Matsumoto draft and thereby tries to regain the initiative by embroiling us in a discussion of his draft.

4. Accordingly, when General Whitney finished reading the memorandum, he asked Mr. Shirasu if he was familiar with the contents and upon receiving a negative answer he asked him to read it. When he had finished reading it, General Whitney said: "this memorandum by Dr. Matsumoto is a repetitious defense of his draft of constitution which, as I have previously stated, has been rejected by the Supreme Commander as an instrument affording the opportunity to the people of Japan for the freedom and democracy to which they are entitled. The Supreme Commander has approved the proposed constitution which I presented to Dr. Matsumoto and Mr. Yoshida last week, and he is determined that the principles embodied in the proposed constitution

shall be brought before the people and that the people shall have an opportunity for a full and free explanation thereon". General Whitney then asked Mr. Shirasu if the so called "supplementary explanation" represented the views of the cabinet to which he replied that he thought it did not but that it represented Dr. Matsumotos views. General Whitney then asked him if the draft of constitution which he had submitted had been presented to the cabinet, to which Mr. Shirasu replied that it had been, whereupon General Whitney said to Mr. Shirasu: "the Supreme Commander is determined that the people of Japan shall have an opportunity to pass upon the constitution principles contained in the document transmitted by me the other day. This does not mean that minor variations, the better to adapt it to the understanding or requirements of the people, are not acceptable. The Supreme Commander, however, is insistent that the principles embodied in the draft constitution which I submitted must be maintained, therefore, unless I hear from the Cabinet within 48 hours that the principles of the constitution which I submitted are acceptable to the Cabinet, and will be sponsored by it before the people, the Supreme Commander will take the constitution to the people directly

and make it a live issue in the forthcoming campaign in order that

the people will have the opportunity to enact this constitution.

C O P Y

Supplementary Explanation concerning the

Constitutional Revision

February 18th, 1946

Dear General,

I take the liberty of submitting to you herewith a copy of the supplementary explanation concerning the proposed constitutional revision, which I have written following our meeting last Wednesday.

It was a great pleasure to see you. I am most grateful for your helpful and enlightening views on this subject of vital importance, and beg to solicit your continued cooperation and guidance.

Yours very sincerely,

s/ G. Matsumoto

Brig. General C. Whitney,
Chief of the Government Section,
G.H.Q., Tokyo.

C
O
P
Y

C O P Y

Supplementary Explanation concerning the

Constitutional Revision

1. We may cite the United States Constitution and the English Constitution as the best examples of a democratic constitution in the world. These two great constitutions are both conceived in the same spirit and founded on the same principles of democracy; but in the outward form, the two differ radically in that the one is a written constitution while the other is a constitution made up largely of conventions. This difference is due to the difference in customs and traditions, and historical backgrounds between the two countries. It is noteworthy that there does exist such a difference in the constitutions of the two great nations of a common stock and with a common language.

The laws of a nation are largely the product of its own history. Any law or system imported or transplanted from another country will not necessarily prove a success. For instance, the English parliamentary democracy, which was adopted by many European countries, has failed to thrive on the continent. Nor the presidential democracy of the United States, transplanted in Latin American Republics, has necessarily been successful, as witness the frequent dictatorships and revolutions there. Such failures may be attributed in each case to the arbitrary transplantation of a constitutional system unadapted to the condition and circumstance of the nation concerned.

The most glaring case in which a constitution, which was drawn up in the most democratic way possible, not only failed to achieve the desired results but on the contrary was abused in the worst possible manner, is the German constitution of 1919. The Weimar Constitution

stipulated clearly that sovereign powers rested with the people, and the president was to be elected directly by the people, and the legislative power was exercised by the Reichstag, and the holding of the office of the Reichskanzler was conditioned on the confidence of the Reichstag. It kept the way open for decision by plebiscite in certain cases of legislation or constitutional revision. It set forth carefully the peoples' rights and duties. And it contained numerous thoroughly democratic provisions relating to equality and inviolability of elemental human rights.

If that constitution had operated literally, the German nation would have enjoyed democracy and freedom to an extent unparralled elsewhere. But what sort of a situation arose soon after the promulgation of the constitution does not require recounting. Hitler and his Nazi party, while abstaining from altering the Constitution directly, trampled upon its spirit by issuing all kinds of unconstitutional laws and regulations, and inaugurating an unprecedented reign of brute force.

2. The above example proves conclusively the fact that the constitution of a country can achieve the desired ends only when it is adapted to its national circumstances, and that otherwise, it will only invite abuses leading to fearful tyrany and misrule. This is not true not only of constitutions but also of all laws and institutions.

Jurists of the historical school maintain that laws originate and develop among nations and peoples just as languages originate and develop. The theory is certainly sound as long as it does not go as far as to deny the existence, as is claimed by the natural law school, of the universal sense of justice and certain fundamental legal concepts common to all races and peoples.

The juridical institution of England is built largely upon customs

and conventions. The Common Law and equity have evolved through series of precedents of long centuries. Even the statute laws instead of having been specially enacted, are mostly a compilation of past practices. The constitution itself consists, as already stated, of conventions for the most part.

The civil codes of France and Germany are both based upon the Roman Law. Yet there are radical differences between the two. Their constitutions, although patterned after the English parliamentary government system, differ also in substance.

Thus, the laws of different countries naturally vary in form and contents according to their respective histories and traditions, even if they are identical in the underlying principles and purposes. Any attempt to unify these varying laws is likely to end in the obstruction of their smooth and successful operation. In this respect a juridical system is very much like certain kinds of plants, which transplanted from their native soil, degenerate, or even die. Some of roses of the West, when cultivated in Japan, lose their fragrance totally.

3. The new draft constitution submitted the other day may seem outwardly meagre in bulk and of a rather neutral character. That is because the proposed revision aims to leave the existing constitution untouched as far as possible so as to avoid arousing needless antagonism on the part of the great majority of our people, who are neither radicals nor communists. On the other hand, the revised constitution marks, in practice, a big step forward toward parliamentary democracy after the English pattern, as has been stated in the "General Explanation" which was submitted previously.

Metaphorically speaking, the new constitution is a tablet sugar-coated for the benefit of the masses. As a matter of fact, under the

revised constitution, since all important matters ofstate will be administered with the consent and support of the Diet, the sovereign powers of the emperor are, in practice, transferred to the Diet. Again, since any minister of state, who has lost the confidence of the Diet, will be automatically removed from his post, the authority to appoint state ministers lies, in practice, also in the Diet. Moreover, the emperor does nothing without the advice and assistance of his ministers. All these changes, when compared with the old system, are so drastic, as may be called "revolutionary" in a way.

The fact that hithertofore Japan was undemocratic, and witnessed during the past decade a terrible misrule of militarists, is attributable to the flaws in the old constitution, which rendered it possible for the cabinet and the military to stand aloof and outside the control of the people. The new constitution eradicates the past evils at the very root.

However, after all, the question whether or not democracy shall prevail in Japan is not one of revision of the constitution, article by article, but rather of the understanding on the part of the people of what democracy really stands for and their genuine desire for a democratic government. Accordingly, it is deemed of the greatest importance to teach democracy in and out of school. If the knowledge about democratic principles are disseminated, and the democratic sentiments are developed, in the nation, the proposed new constitution will prove sufficiently elastic to bring about a situation where the sovereign power may be said to be vested in the people as far as practical politics are concerned. Ane when that stage has been reached, then the Diet will be in a position to vote for further revision of

the constitution by exercising its right to take the initiative in constitutional amendment, as is provided for in the present draft revision.

On the other hand, if, contrary to the above process too, fundamental or radical a constitutional revision was to be effected suddenly at this time, it would only shock the moderates too severely, and cause them to assume an autogenistic attitude toward democracy itself. Under such a circumstance, there could be no assurance that the disastrous consequences of the Weimar Constitution might not be repeated again. To guard against the possible reactionarism and to introduce changes step by step has been the guiding principle behind the present revision.

In Japan today conservatism does not assert itself openly, and our newspapers and radio broadcasts are largely and distinctly left. But it would be dangerous to guage the true situation by the outward symptoms alone. It should not be forgotten that deep under the new radical movements there is a strong back current. I am not of course on the side of the conservatives. I stand for progress. What I fear is the internal friction which may be brought on by an attempt at too sudden and too drastic a move, which may beget reactionarism and in the end retard the smooth and wholesome progress of democracy.

4. It is for these reasons that the old constitution that has remained unaltered for the past 56 years has been allowed to retain its outward form more or less intact, although substantially considerable improvements have been effected.

The "General Explanation" mentioned nothing of this policy of revision. And I feel it incumbent upon me to submit a statement of it herewith. I should like to add that I have studied carefully your

counter-proposal of February 13, and have arrived at the conclusion that although the formula appears to be diametrically apposed to our own, in their underlying principles the two do not stand so widely apart as seems at first sight. I desire therefore to submit for your information the present statement setting forth frankly the reasons why our draft revision has been put in the present form after most careful consideration. It is my earnest hope that you will kindly give your criticism and suggestions as to whatever points there may be in our draft for alterations and additions.

Postscript. The "General Explanation", previously submitted, contains a typographical mistake: "cf. No. 3." on Page 3, line 3, should read "cf. No. 1." There may be other textual errors and imperfections in English version, for which I offer my sincere apologies.

Memorandum for the Supreme Commander dated 19 February 1946.

16

B-124.1

COPY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

MEMORANDUM FOR THE SUPREME COMMANDER: 19 February 1946.

Mr. Shirasu called at my office at 1530 and advised that he was directly representing the Cabinet whom he had just left in session; that the Cabinet requested a forty-eight hour extension of the time I gave them yesterday in which to accept the principles of the constitutional draft I submitted at the conference on the 13th.

I asked Mr. Shirasu as to the actual purpose for this delay. He informed me that our constitution was being translated by a trusted translator into Japanese as most members of the Cabinet could not speak or understand the English language, and as a consequence required a Japanese translation in order to fully understand the same. He stated that the complete translation would not be available until to-morrow afternoon. I informed Mr. Shirasu that I considered the request for forty-eight hours extension was quite reasonable as I felt sure that if the document was fully understood the members of the Cabinet would see in it a means of protecting the dignity and person of the Emperor and the Imperial institution in modified form; a means of assuming a moral leadership among other nations of the world; a means of gaining great favor among the Allied nations; and a means of sharply reducing the period of Allied control over Japan. I told him that if the members of the Cabinet thoroughly understood the principles embodied in that document I would lay everything I had on their immediate and wholehearted acceptance of them. For that reason I was entirely in accord with the proposition of giving them the time to reach such thorough understanding, but that it was in their interest to reach a decision earlier, if at all possible to do so, and communicate that decision at once to this headquarters, without waiting for the expiration of time agreed upon - this in the interest of the preservation of secrecy and the time element involved as well. I requested that I be furnished with a copy of the Japanese translation just as soon as it was completed.

To all of the above Mr. Shirasu agreed without hesitation, and left my office with the greatest display of relief, saying that he would rejoin the Cabinet immediately, and that the Cabinet proposed to remain in session constantly until the matter was disposed of.

I think there is no doubt now but that the Cabinet will accept these principles and get into the swing of this thing as they finally did into compliance with the "purge" directive. There was no weakness in my agreement to extend the time given them yesterday as I premised it on both the necessity and the value of a complete understanding of the document by the members themselves - showing every confidence that if the document was understood there was no doubt as to the action which the Cabinet would take thereon. I think there is no doubt.

Mr. Shirasu repeated to-day that following our conversation yesterday was the first time our constitution had been placed before the entire Cabinet. Heretofore I have been inclined to doubt the truth of this statement but it may be that the most reactionary element of the Cabinet (Matsumoto, Yoshida et al) has been trying to play a lone hand without taking the more liberal element into its confidence, until they were forced to do so by the position I took yesterday.

C.W.

18

COPY

NOTE:

I believe that the analysis on the attached memorandum is further borne out by:

(a) the routine pattern which the Japanese have followed with respect to compliance with all directives of a distasteful nature.

(b) the fact that this section has received no tip-off of final action by the Cabinet.

The Foreign Minister's statement that he is leaving town may be

(a) false,
(b) opposed to the idea that a crisis is imminent, or
(c) suggestive that he has lost out in his reactionary stand on the constitutional issue.

C.W.

21 Feb 46

Memorandum for the Supreme Commander dated 21 February 1946.

17

B-126.1

COPY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

MEMORANDUM FOR THE SUPREME COMMANDER: 21 February 1946

With my senior officers I have been endeavoring to analyse the significance of the call of the Prime Minister upon you this afternoon. This call is being made 24 hours before the time limit authorized at the request of the Cabinet for final decision on the sponsorship by the Government of the proposed constitution we submitted on the 13th. It is significant that by it the Cabinet has determined to communicate its position to you rather than maintaining the lower level on which the discussions have heretofore been conducted.

The circumstances surrounding this move strongly suggest to me that its purpose is to play a last and final card before formally acting upon the matter which is before it. This card may be in the form of a threatened resignation of the Cabinet or an effort to secure your acceptance of a much more moderate revision of the constitution. If it be in the nature of a threat to resign, I believe you can safely ignore it as I do not believe that the Cabinet would take such a step on an issue designed to not only fulfil the requirements of the Potsdam Declaration and Surrender terms, but designed to give the people the real essence of human liberty with the ultimate guarantee of that liberty by placing the power of protection directly in the hands of the people.

Should on the other hand the Cabinet in final analysis resign, it would have little effect upon the functioning of government as it consists entirely of old men who have little practical knowledge of the workings of government and no direct contact with the machinery of government, the full administration of which is under the control of the professional civil service. I strongly recommend:

(a) that you ignore any such threat of resignation, and that you adhere to the firm position already taken with respect to the constitutional revision without commitment as to any future move you propose to take if this Cabinet lacks the moral courage to sponsor a new constitution embodying the principles contained in that which we submitted.

(b) that you consider directing the Prime Minister to place the constitution before the Emperor and require his decision as to whether he is prepared to himself sponsor it or even proclaim it with your backing to the people.

In many respects, if these constitutional principles were given to the people by the Emperor with your approval, it would be a much more powerful move than if it were sponsored by a Cabinet representing in final analysis but one section of the people.

COURTNEY WHITNEY
Brigadier General, U.S. Army.

19

Memorandum dated 25 February 1946 re Picnic.

18

B-127.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

25 February 1946

MEMORANDUM FOR THE CHIEF, GOVERNMENT SECTION.

1. The undersigned attended a small private picnic on Sunday, 24 February, at the country place of Mr. Nataru Narahashi, Chief Secretary of the Cabinet, at Oiso.

2. During the course of the afternoon Mr. Narahashi took the undersigned aside and stated that during the past ten days there had been a furious struggle within the cabinet over the issue of constitutional reform. He stated that for the past several months a conflict had been developing between the bureaucrats, supported by remnants of the militarists and the Zaibatsu on one hand, and the democratic elements on the other. This conflict was concentrated on the issue of the powers of the Emperor.

3. The "Conservatives", as Mr. Narahashi termed the first group, were led by Dr. Matsumoto, Minister without Portfolio, who had submitted a draft of a revised constitution which left the powers of the Emperor substantially unaltered. The second group, which Mr. Narahashi said he led, favored stripping the Emperor of all "governmental power" but permitted him to remain as the symbol of the unity of the people. Mr. Narahashi said that his group felt that only through vesting sovereignty in the people could the Emperor be saved, and that the Tenno system must be abolished. He referred to the Emperor rescript in which the Emperor divested himself of all divinity as the first step in that direction.

4. According to Mr. Narahashi, at a meeting with the Emperor on Friday at which the Prime Minister, the Foreign Minister, and Mr. Narahashi were present, the Emperor had given his unqualified approval to the plan proposed by the "Democratic group". However, Mr. Narahashi stated, the fight within the cabinet was still bitter because of the fear that the bureaucrats, supported by ex-militarists, would resort to terrorism. This fear, coupled with the unwillingness of the bureaucratic members of the cabinet to surrender their power, made them completely unwilling to accept the "Democratic Plan". He said that the issue would be resolved within three days and might result in resignations from the cabinet. In response to a question however he stated that the cabinet would not fall on this issue. In the meantime this cleavage within the cabinet is being reflected throughout the government and the feeling was so intense that there appeared real danger of attempts on the lives of the Prime Minister and other members of the cabinet. Narahashi stated that whenever Shidehara appeared in public he stood alongside him because he felt this danger and wished to share the risk with the Prime Minister.

Memo for the Chief, Govt Sect, 25 Feb 1946.

5. Narahashi said that Matsumoto was doing everything within his power to delay the decision and to interpose legalistic obstacles to the adoption of the "Democratic Plan", such as stating that the plan could not be submitted until after the new Diet was elected, or that the House of Peers would refuse to ratify the plan. Narahashi stated that he would force Dr. Matsumoto's resignation if necessary and that the House of Peers could be dissolved if it proved recalcitrant. At this point Narahashi said that although he had heretofore been unwilling to assume cabinet rank, he had found that his influence as Chief Secretary was insufficient to enable him to assist the Prime Minister in carrying on the fight; that he had decided to assume cabinet rank and that within the next ten days he would be appointed Demobilization Minister. In response to a direct question as to where Foreign Minister, Yoshida, stood on the constitutional issue, Narahashi said that Yoshida stood with the Prime Minister and himself.

6. Narahashi said that there was some risk involved in using the support of the Emperor because of the possibility that the people would say that the "democratic group" was merely another clique using the Emperor as a shield in exactly the same way that the bureaucrats and militarists had in the past. He clearly indicated that the support of SCAP was imperative. In this connection it is significant that, although Narahashi must have known that the "Democratic Plan" originated with SCAP, at no time did he give the slightest hint that it was anything other than a plan formulated by one group in the cabinet. It was apparent to us that he was implying that it was vitally necessary to maintain the fiction that this was a purely Japanese plan promulgated with the approval of (but not originated by) SCAP.

7. Turning to another topic, Mr. Narahashi stated that today the cabinet would postpone the elections from 31 March to 10 April in order to permit adequate screening pursuant to the directives of 4 January of the candidates for election to the Diet and the political parties supporting them.

Chas L. Kades

CHAS L. KADES
Colonel, INF

A. R. MOSELY
Comdr., USNR

Emperor's Message, 6 March 1946.

19

B-129.1

19

IMPERIAL MESSAGE

Consequent upon our acceptance of the Potsdam Declaration the ultimate form of Japanese government is to be determined by the freely expressed will of the Japanese people. I am fully aware of our nation's strong consciousness of justice, its aspirations to live a peaceful life and promote cultural enlightenment, and its firm resolve to renounce war and to foster friendship with all the countries of the world. It is, therefore, my desire that the Constitution of our empire be revised drastically upon the basis of the general will of the people and the principle of respect for the fundamental human rights. I command hereby the competent authorities of my government to put forth in conformity with my wish their best efforts toward the accomplishment of this end.

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6 March 1946

English text of Constitution as submitted 6 March 1946
by Emperor's Message.

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B-130.1

as submitted by Message

CONSTITUTION OF JAPAN

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance, for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese People, pledge our national honor, determined will and full resources.

CHAPTER I

THE EMPEROR

Article I. The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people.

Article II. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article III. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article IV. The Emperor shall perform only such state functions as are provided for in this constitution. Never shall he have powers related to government.

The Emperor may delegate his functions as may be provided by law.

Article V. When, in accordance with the Imperial House Law, a regency is established, the Regent shall exercise his functions in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article VI. The Emperor shall appoint the Prime Minister as designated by the Diet.

Article VII. The Emperor, with the advice and approval of the Cabinet, shall perform the following functions of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general elections.

Attestation of the appointment and dismissal of Ministers of State, Ambassadors, and other officials as provided for by law.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Receiving foreign ~~ambassadors and ministers.~~

Article VIII. No property can be given to, or received by, the Imperial House, and no receipts and disbursements can be made thereby, without the authorization of the Diet.

CHAPTER 2

RENUNCIATION OF WAR

Article IX. War, as a sovereign right of the nation, and the threat or use of force, is forever renounced as a means of settling disputes with other nations.

The maintenance of land, sea, and air forces, as well as other war potential, will never be authorized. The right of belligerency of the state will not be recognized.

CHAPTER 3

RIGHTS AND DUTIES OF THE PEOPLE

Article X. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article XI. The enjoyment of the freedoms and rights guaranteed to the people by this constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article XII. All of the people shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article XIII. All natural persons are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin. No right of peerage shall from this time forth embody within itself any national or civic power of government, nor shall peerage extend beyond the lives of those now in being. No privilege shall accompany any award of honor, decoration or any distinction; nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of damage and other matters, for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article XVII. Freedom of thought and conscience shall be held inviolable.

Article XVIII. Freedom of religion is guaranteed to all. No religious organization shall receive any special privilege from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite, or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article XIX. Freedom of assembly, association, speech, and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XX. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article XXI. Academic freedom is guaranteed.

Article XXII. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual co-operation, with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIII. In all spheres of life, laws shall be designed for the promotion and extension of social welfare and security, and of public health, freedom, justice and democracy.

Article XXIV. Every person shall have the right to receive an equal education corresponding to his ability, as provided by law.

Every person shall be obligated to insure that all of the children under his protection receive elementary education. Such education shall be free.

Article XXV. All persons have the right to work. Standards for working conditions, wages and hours shall be fixed by law. The exploitation of children shall be prohibited.

Article XXVI. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article XXVIII. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article XXIX. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; he shall not be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXX. No person shall be deprived of life or liberty, nor shall any criminal penalty be imposed, except according to procedure established by the Diet, nor shall any person be denied the right of access to the courts.

Article XXXI. The right of the people to be secure in their persons, homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and the person or things to be seized.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXII. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXIII. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government. No person shall be placed in double jeopardy for the same crime.

Article XXXIV. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXV. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted.

CHAPTER 4

THE DIET

Article XXXVI. The Diet shall be the highest organ of state power, and shall be the sole law-making authority of the State.

Article XXXVII. The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.

Article XXXVIII. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article XXXIX. The qualifications of electors and members for both Houses shall be fixed by law. However, there shall be no discrimination because of sex, race, religion, or social status.

Article XL. The term of office of members of the House of Representatives shall be 4 years. However, the term may be terminated before the full term is up, by dissolution of the House of Representatives.

Article XLI. Matters pertaining to the method of election of members of both Houses, electoral districts, and method of voting, shall be fixed by law.

Article XLII. The term of office of the members of the House of Councillors shall be six years, except for half the members serving in the first term. Election for half the members shall take place every three years.

Article XLIII. No person shall be permitted to be a member of both Houses simultaneously.

Article XLIV. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with the law.

Article XLV. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any member arrested beforethe opening of the session shall be freed during the term of the session upon demand of his House.

Article XLVI. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article XLVII. The Diet shall be convoked at least once per year.

Article XLVIII. The Cabinet may call extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Diet must be called into session.

Article XLIX. When the House of Representatives is ordered dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved, the House of Councillors must, at the same time, be closed.

Article L. Each House shall judge disputes related to qualifications and elections of its members.

In order to deny a seat to anyone certified to have been elected, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article LI. Business cannot be transacted in either House unless at least one-third of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article LII. Deliberation in each House shall be public. No secret meetings shall be held.

Each House shall keep a record of proceedings. This record shall be published and distributed to the public.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article LIII. Each House shall select its own president and other officials.

Each House shall establish its rules and regulations pertaining to meetings and proceedings, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article LIV. A bill becomes a law on passage by both Houses, except as otherwise provided by this Constitution.

A bill which is passed by the House of Representatives, and rejected

by the House of Councillors, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection.

Article LV. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, the decision of the House of Representatives will be considered the decision of the Diet.

Article LVI. The second paragraph of the preceding article applies also to Diet approval required for the conclusion of treaties, and international conventions and agreements.

Article LVII. Each House may conduct investigations in relation to national affairs, and may compel the presence and testimony of witnesses, and the production of records. In such cases, each House can punish, in accordance with law, those who do not comply with the demands.

Article LVIII. The Prime Minister, and the Ministers of State, may, at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article LVIX. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

Article LX. The House of Representatives shall sit as the National Diet immediately upon the effective date of this Constitution and until such time as the House of Councillors shall regularly be constituted.

CHAPTER 5

THE CABINET

Article LXI. Executive power shall be vested in the Cabinet.

Article LXII. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article LXIII. The Prime Minister shall be designated by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both houses, provided for by law, cannot reach an agreement, the decision of the House of Representatives shall be the decision of the Diet.

Article LXIV. The Prime Minister shall, with the approval of the Diet, designate the Ministers of State. The second paragraph of the preceding article shall apply to this approval.

The Prime Minister may decide on the removal of Ministers of State as he chooses.

Article LXV. If the House of Representatives passes a no-confidence resolution, or fails to pass a confidence resolution, the Cabinet shall resign en masse, unless it dissolves the House of Representatives within ten days.

Article LXVI. When there is a vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election, the Cabinet shall resign en masse.

Article LXVII. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article LXVIII. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet, and exercises supervision and control over various administrative branches.

Article LXIX. The Cabinet, in addition to other general administrative functions, shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties, international conventions and agreements. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by the Diet, administer the civil service.

Prepare the budget, and present it to the Diet.

Enact and promulgate orders and regulations in order to carry out the provisions of this Constitution and of the law. However, it cannot include penal provisions in such orders and regulations unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article LXX. All laws and orders shall be signed by the competent Minister of State, and countersigned by the Prime Minister.

Article LXXI. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER 6

JUDICIARY

Article LXXII. The whole judicial power is vested in a Supreme Court and in such inferior courts as the Diet shall establish.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXXIII. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts, the administration of judicial affairs, and such other matters as may properly affect the free exercise of the judicial power.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXXIV. Removals of judges shall be accomplished by public impeachment only unless judicially declared mentally or physically incompetent. No disciplinary action shall be administered by any executive organ or agency.

Article LXXV. The Supreme Court shall consist of such number of judges as may be determined by law; all such judges shall be appointed by the Cabinet and shall be retired upon the attainment of the age of 70 years.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

All such judges shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVI. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten years with privilege of reappointment and shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office. No judge shall hold office after attaining the age of 70 years.

Article LXXVII. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article LXXVIII. Trials shall be conducted and judgment declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press, and cases wherein the rights of the people as reserved in Chapter 3 of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER 7

FINANCE

Article LXXIX. The power to administer national finances shall be exercised as the Diet shall determine.

Article LXXX. No new taxes shall be imposed or existing ones modified except by action of the Diet or under such conditions as the Diet may prescribe.

All taxes in effect at the time this Constitution is promulgated shall continue to be collected under existing regulations until changed or modified by the Diet.

Article LXXXI. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article LXXXII. The Cabinet shall prepare and submit to the Diet for its consideration and decision an annual budget for each fiscal year.

Article LXXXIII. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized to be expended upon the responsibility of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXIV. All property of the Imperial Household, other than the hereditary estates, shall belong to the State. The income from all Imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXV. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of the State.

Article LXXXVI. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year immediately following the period covered.

The organization and competency of the board of audit shall be determined by the Diet.

Article LXXXVII. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER 8

LOCAL SELF GOVERNMENT

Article LXXXVIII. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article LXXXIX. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their legislative assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article XC. Local public entities shall have the right to manage their property, affairs and government and to frame their own charters within such laws asthe Diet may enact.

Article XCI. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER 9

AMENDMENTS

Article XCII. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor, in the name of the People, as an integral part of this Constitution.

CHAPTER 10

SUPREME LAW

Article XCIII. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the state and no public law or ordinance and no imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Article XCIV. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

The Emperor or the Regent, the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER 11

SUPPLEMENTARY PROVISIONS

Article XCV. The Ministers of State, members of the Diet, judges and all other public officials in office at the time of the enactment of this Constitution, shall remain at their posts in accordance with existing provisions of law regardless of the provisions of this Constitution, until their successors are elected or appointed.

Memorandum for Record dated 12 March 1946.

B-146.1

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Public Administration Division

12 March 1946

MEMORANDUM FOR THE RECORD:

SUBJECT: Constitutional Reform.

1. This memorandum is intended to record the basis of the authority which SCAP has in the field of constitutional revision.

2. The Potsdam Declaration agreed to by the Chiefs of State of Great Britain, China, and the United States, and adhered to by Russia, as proclaimed on 26 July 1945, sets forth the terms for the surrender of Japan. Among those terms are the following provisions:

"6. There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

"10. We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.

"12. The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government."

3. On 11 August 1945 the Swiss government transmitted to the United States Secretary of State the contents of a message from the Japanese government in which it was stated that the Japanese government was ready to accept the terms of the Potsdam Declaration "with the understanding that said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a Sovereign Ruler."

4. On the same date the Secretary of State transmitted to the Swiss government an answer to that message which stated in part: "From the moment of surrender the authority of the Emperor and of the Japanese government to rule the State shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate the surrender terms".

5. On 13 August the President of the United States approved and dispatched a directive to the Supreme Commander for the Allied Powers which directive contained the following provisions:

"1. In accordance with the agreement among the governments of the United States, the Chinese Republic, the United Kingdom, and the Union of Soviet Socialist Republics to designate a Supreme Commander for the Allied Powers for the purpose of enforcing the surrender terms of Japan, you are hereby designated as the Supreme Commander for the Allied Powers . . .

"5. From the moment of surrender, the authority of the Emperor and the Japanese government to rule the State will be subject to you and you will take such steps as you deem proper to effectuate the surrender terms".

6. On 14 August 1945 the Japanese government submitted through the Swiss government a message which stated that the Emperor was prepared "to authorize and insure the signature of his government and the Imperial General Headquarters of the necessary terms for carrying out the provisions of the Potsdam Declaration".

7. On 2 September 1945 the instrument of surrender was signed. This document contained in paragraph 8 the following provisions: "The authority of the Emperor and the Japanese government to rule the State shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate these terms of surrender".

8. On 7 September 1945 a dispatch was transmitted from the Joint Chiefs of Staff to SCAP which provided in part: "The authority of the Emperor and the Japanese government to rule the State is subordinate to you as Supreme Commander for the Allied Powers. You will exercise your authority as you deem proper to carry out your mission."

9. SCAP's basic mission is set forth in the Occupation Directive for Japan, JCS 1380/15, which provides, Part I, paragraph 2:

"The basis of your power and authority over Japan is the directive signed by the President of the United States designating you as Supreme Commander for the Allied Powers . . . and the instrument of surrender . . . executed by the Emperor of Japan . . . These documents in turn are based upon the Potsdam Declaration of 26 July 1945 . . . the reply of the Secretary of State on 11 August 1945 to the Japanese communication of 10 August 1945 . . . and the final Japanese communication dated 14 August 1945 . . . Pursuant to these documents your authority over Japan as Supreme Commander for the Allied Powers is supreme for the purpose of carrying out the surrender. In addition to the conventional powers of a military occupant of enemy territory, you have the power to take any steps deemed advisable and proper by you to effectuate the surrender and the provisions of the Potsdam Declaration."

This basic directive further provides in paragraph 3a, "The ultimate objective of the United Nations with respect to Japan is to foster conditions which will give the greatest possible assurance that Japan will not again become a menace to the peace and security of the world and will permit her eventual admission as a responsible and peaceful member of the family of nations. Certain measures considered to be essential for the achievement of this objective have been set forth in the Potsdam Declaration. These measures include among others . . . the abolition of militarism and ultra-nationalism in all their forms . . . the strengthening of democratic tendencies and processes in governmental, economic and social institutions; and the encouragement and support of liberal political tendencies in Japan. The United States desires that the Japanese conform as closely as may be possible to the principles of democratic self-government but it is not the responsibility of the occupational forces to impose upon Japan any form of government not supported by the freely expressed will of the people".

10. Other specifications of basic policy relative to the government of Japan are contained in this directive. It is significant that in only a very few instances is SCAP required to secure prior approval of the Joint Chiefs of Staff. Nowhere is there any requirement, stated or implied, that SCAP consult the Joint Chiefs of Staff in connection with constitutional changes excepting only insofar as they may involve removal of the Emperor.

11. No subsequent directive has been issued governing or defining SCAP's powers in the field of government.

12. It is abundantly clear that SCAP's powers over Japan within the scope of the basic directive are absolute and that SCAP has the authority to undertake whatever measures it deems appropriate to effectuate the surrender terms, and that such authority necessarily includes the right to approve such measures as the Japanese themselves initiate to establish a responsible government in conformity with the surrender terms.

13. SCAP's action in approving the proposed new Constitution is in complete conformity with the United States policy as formulated by the State-War-Navy Coordinating Committee, after consultation with the Joint Chiefs of Staff, for presentation to the Far Eastern Commission by the United States representative. This policy is set forth in SWNCC 228 sent SCAP by the War Department for information of the Supreme Commander.

14. In view of the foregoing, it is patently clear that SCAP's action in approving the proposed new Constitution for Japan is within the scope of his authority. Furthermore, it discharges one of SCAP's basic responsibilities in the accomplishment of his mission.

15. See also Memorandum of 1 February 1946 on the effect of the Yalta Agreement on the authority of SCAP in the field of constitutional reform.

CHAS L. KADES
Colonel, Inf.
Chief, Public Admin. Division.

COPY

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

1 February 1946

MEMORANDUM FOR THE SUPREME COMMANDER.

SUBJECT: Constitutional Reform.

1. The question of constitutional reform of the Japanese governmental system is rapidly approaching a climax. Several proposed revisions of the Japanese constitution have been drafted by governmental and private committees. Constitutional reform may well be a cardinal issue in the coming election campaign.

In these circumstances, I have considered the extent of your power as Supreme Commander to deal with fundamental changes in the Japanese constitutional structure, either by approving or disapproving proposals made by the Japanese government or by issuing orders or directives to that government. In my opinion, in the absence of any policy decision by the Far Eastern Commission on the subject (which would, of course, be controlling), you have the same authority with reference to constitutional reform as you have with reference to any other matter of substance in the occupation and control of Japan.

2. You have authority from the Allied Powers to proceed with constitutional reform. In accordance with the agreement among the governments of the US, USSR, UK and China, the President of the United States designated you as Supreme Commander for the Allied Powers to "take such steps as you deem proper to effectuate the surrender terms". (Par. 5 of Designation). By the Instrument of Surrender, the Japanese Government accepted the provisions of the Potsdam Declaration. (Par. 1 of Instrument). The Potsdam Declaration requires the Japanese government to "remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people", and the establishment "in accordance with the freely expressed will of the Japanese people of a peacefully inclined and responsible government". (Pars. 10 & 12 of Declaration.)

To achieve this alteration in the nature of Japan's governmental institutions requires fundamental changes in the Japanese constitutional structure; and such alteration is essential to the execution of the Potsdam Declaration. Therefore, your authority to effectuate constitutional reform designed to develop a form of government responsible to the people is implicit in the terms of your designation by the Allied Powers as Supreme Commander for the purpose of enforcing the surrender terms.

3. You have authority from the Joint Chiefs of Staff to proceed with with constitutional reform. The Joint Chiefs of Staff have directed that you "exercise your authority as you deem proper to carry out your mission," (Cable No. WX 60333 dated 7 September 1945). Your mission as set forth in the basic

occupation directive for Japan (JCS 1380/15) includes: (a) carrying out measures for "the strengthening of democratic tendencies and processes in governmental economic and social institutions", (b) permitting and favoring "changes in the direction of modifying the feudal and authoritarian tendencies of the government," and (c) informing the Japanese that "they will be expected to develop a non-militaristic and democratic Japan", (Pars. 3a, 3c, and 4c of Directive).

It is clear that you cannot accomplish these aspects of your mission without effecting fundamental changes in the Japanese constitutional structure. Since the development of a democratic Japan has been explicitly made a part of your mission, you have ample authority from the Joint Chiefs of Staff to approve or order constitutional reform designed to achieve the desired results.

4. Your authority to make policy decisions on constitutional reform continues substantially unimpaired until the Far Eastern Commission promulgates its own policy decisions on this subject. The Charter of the Allied Council for Japan requires you to consult and advise "with the Council in advance of orders on matters of substance" but your "decisions upon these matters shall be controlling", (Par. 5 of Charter). The sole limitation imposed upon your authority to effect constitutional reform exists in case a member of the Council disagrees with a proposed order "regarding the implementation of policy decisions of the Far Eastern Commission on questions concerning ***fundamental changes in the Japanese constitutional structure" (Par. 6 of Charter). In such event your order would be referred to the F.E.C. to determine whether it properly implemented the F.E.C. policy decision.

In the absence of any F.E.C. policy decision, however, there is no restriction upon your executive authority except (a) insofar as the obligation for advance consultation with the Allied Council limits the manner in which your authority is exercised, and (b) insofar as the F.E.C. may review any action you may take. Under its charter, the F.E.C. may, at the request of any member, review any directive issued to you or any action taken by you, (Par. II, A, 2. of Charter). Similarly, no directive may be issued to you by the Joint Chiefs of Staff or any other agency of the United States Government "dealing with fundamental changes in the Japanese constitutional structure" without "the attainment of agreement in the Far Eastern Commission", (Par III, 3). Neither of these provisions, however, precludes your taking action pursuant to existing directives to approve or direct constitutional reform.

5. Should the F.E.C. eventually promulgate a policy directive involving changes in the constitutional structure, your decision in the issuance of directives (orders) thereon would not be controlling if any member of the Allied Council for Japan objected. It is my opinion that the word "order" in the charter of the Allied Council is used in the sense of compulsion and would not embrace a mere approval by you of constitutional reform measures submitted to you by the Japanese government, although your action in approving the same would be subject to review by the F.E.C. under the general review authority of its charter.

6. To recapitulate, I am of the opinion (a) that you now have the unrestricted authority to take any action you deem proper in effecting changes in the Japanese constitutional structure -- the only possible restriction being upon action taken by you toward removal of the Emperor, in which case you

are required to consult with the Joint Chiefs of Staff; (b) should the F.E.C. issue a policy directive dealing with the matter of constitutional reform, then and in such event the issuance of any constitutional reform directive (order) upon the Japanese government would be subject to objection by any member of the Allied Council for Japan and your decision would not be controlling.

7. The above opinion represents the composite view of all officers of the Government Section who have examined this question.

COURTNEY WHITNEY
Brigadier General, U.S. Army
Chief, Government Section.

Check sheet to Chief, Government Section, dated 22 March 1946.

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B-152.1

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CLK/ef

Govt Sect

Chief, Govt Sect

22 March 1946

1. 1. Attached are two copies of the English translation of the proposed new constitution for Japan which were brought to me today by Mr. Jiro Shirasu, Vice-President of the Central Liaison Office, with the request that:

a. One copy be autographed by the Supreme Commander.

b. The other copy be autographed by you and your principal assistants in the conferences concerning the constitution.

2. Mr. Shirasu explained that this request came from Mr. Wataru Narahashi, Chief Secretary of the Cabinet and Minister without Portfolio, who desired these copies as a permanent historical record for the cabinet library.

3. I told Mr. Shirasu that the request would be given to you for consideration.

C. L. Kades
Colonel, Inf.

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Simplified Version of Constitution submitted by Japanese
22 April 1946.

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B-153.1

CONSTITUTION OF JAPAN

(SIMPLIFIED VERSION SUBMITTED BY JAPANESE, 22 APRIL 1946)

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim the sovereignty of the people's will and do ordain and establish this Constitution, founded upon the universal principle that government is a sacred trust the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people; and we reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

Desiring peace for all time and fully conscious of the high ideals controlling human relationship now stirring mankind, we have determined to rely for our security and survival upon the justice and good faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society designed and dedicated to the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance, for all time from the earth. We recognize and acknowledge that all peoples have the right to live in peace, free from fear and want.

We hold that no people is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all peoples who would sustain their own sovereignty and justify their sovereign relationship with other peoples.

To these high principles and purposes we, the Japanese People, pledge our national honor, determined will and full resources.

CHAPTER I

THE EMPEROR

Article I. The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people.

Article II. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House law passed by the Diet.

Article III. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article IV. The Emperor shall perform only such state functions as are provided for in this constitution. Never shall he have powers related to government.

The Emperor may delegate his functions as may be provided by law.

Article V. When, in accordance with the Imperial House Law, a regency is established, the Regent shall exercise his functions in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article VI. The Emperor shall appoint the Prime Minister as designated by the Diet.

Article VII. The Emperor, with the advice and approval of the Cabinet, shall perform the following functions of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general elections.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honors.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article VIII. No property can be given to, or received by, the Imperial House, and no gifts can be made thereby, without the authorization of the Diet.

CHAPTER 2

RENUNCIATION OF WAR

Article IX. War, as a sovereign right of the nation, and the threat or use of force, is forever renounced as a means of settling disputes with other nations.

The maintenance of land, sea, and air forces, as well as other war potential, will never be authorized. The right of belligerency of the state will not be recognized.

CHAPTER 3

RIGHTS AND DUTIES OF THE PEOPLE

Article X. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article XI. The enjoyment of the freedoms and rights guaranteed to the people by this constitution shall be maintained by the eternal vigilance of the people, and the people shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article XII. All of the people shall be respected as individuals, and their right to life, liberty, and the pursuit of happiness shall, within the limits of the public welfare, be the supreme consideration in legislation and in governmental affairs.

Article XIII. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin. No peerage shall be granted. No privilege shall accompany any award of honor, decoration or any distinction; nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XIV. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any special group.

In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made.

Article XV. Every person has the right of peaceful petition for the redress of damage and other matters, for the removal of public officials and for the enactment, repeal or amendment of laws, ordinances or regulations; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVI. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article XVII. Freedom of thought and conscience shall be held inviolable.

Article XVIII. Freedom of religion is guaranteed to all. No religious organization shall receive any privilege from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite, or practice.

The State and its organs shall refrain from religious education or any other religious activity.

Article XIX. Freedom of assembly, association, speech, and press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XX. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article XXI. Academic freedom is guaranteed.

Article XXII. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis. Laws shall be enacted considering choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article XXIII. In all spheres of life, laws shall be designed for the promotion and extension of social welfare and security, and of public health.

Article XXIV. All people shall have the right to receive an equal education corresponding to his ability, as provided by law.

Every person shall be obligated to insure that all of the children under his protection receive elementary education. Such education shall be free.

Article XXV. All people have the right to work. Standards for working conditions, wages and hours shall be fixed by law. The exploitation of children shall be prohibited.

Article XXVI. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXVII. The right to own property is inviolable, but property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

Article XXVIII. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article XXIX. No person shall be denied the right of access to the courts.

Article XXX. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while committing a crime.

Article XXXI. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; he shall not be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXII. The right of the people to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and things to be seized, or except as provided by Article XXX.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXIII. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXIV. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the government.

Article XXXV. No person shall be compelled to testify against himself.

No confession shall be admitted in evidence if made under compulsion, torture or threat, or after prolonged arrest or detention.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXVI. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he in any way be placed in double jeopardy.

CHAPTER 4

THE DIET

Article XXXVII. The Diet shall be the highest organ of state power, and shall be the sole law-making authority of the State.

Article XXXVIII. The Diet shall consist of two houses, namely the House of Representatives and the House of Councillors.

Article XXXIX. Both Houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article XL. The qualifications of electors and members for both Houses shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status or family origin.

Article XLI. The term of office of members of the House of Representatives shall be 4 years. However, the term may be terminated before the full term is up, by dissolution of the House of Representatives.

Article XLII. The term of office of the members of the House of Councillors shall be six years. Election for half the members shall take place every three years.

Article XLIII. Matters pertaining to the method of election of members of both Houses, electoral districts, and method of voting, shall be fixed by law.

Article XLIV. No person shall be permitted to be a member of both Houses simultaneously.

Article XLV. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with the law.

Article XLVI. Except in cases provided by law, members of both Houses shall be exempt from arrest while the Diet is in session. Any member arrested before the opening of the session shall be freed during the term of the session upon demand of his House.

Article XLVII. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article XLVIII. An ordinary session of the Diet shall be convoked once per year.

Article XLIX. The Cabinet may call extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Diet must be called into session.

Article L. When the House of Representatives is ordered dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of

dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is ordered dissolved, the House of Councillors must, at the same time, be closed, except that the Cabinet may in time of national emergency convoke the House of Councillors in emergency session. Measures enacted at such session shall be provisional and shall become null and void, unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article LI. Each House shall judge disputes related to qualifications and elections of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article LII. Business cannot be transacted in either House unless at least one-third of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution. In case of a tie, the presiding officer shall decide the issue.

Article LIII. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article LIV. Each House shall select its own president and other officials.

Each house shall establish its rules pertaining to meetings,

proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article LV. A bill becomes a law on passage by both Houses, except as otherwise provided by this Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection.

Article LVI. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when a joint committee of both Houses, provided for by law, cannot come to an agreement, or in the case of failure by the House of Councillors to take final action within forty (40) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives will be considered the decision of the Diet.

Article LVII. The second paragraph of the preceding article applies also to Diet approval required for the conclusion of treaties.

Article LVIII. Each House may conduct investigations in relation to national affairs, and may compel the presence and testimony of witnesses, and the production of records.

Article LIX. The Prime Minister, and the Ministers of State, may, at any time, appear in either House for the purpose of debating on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article LX. The Diet shall set up an impeachment court from the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

CHAPTER 5

THE CABINET

Article LXI. Executive power shall be vested in the Cabinet.

Article LXII. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State as provided for by law.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article LXIII. The Prime Minister shall be designated by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if a joint committee of both houses, provided for by law, cannot reach an agreement, or the House of Councillors fails to make designation within twenty (20) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article LXIV. The Prime Minister shall, with the approval of the Diet, appoint the Ministers of State. The second paragraph of the preceding article shall apply to this approval.

The Prime Minister may remove Ministers of State as he chooses.

Article LXV. If the House of Representatives passes a no-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten days.

Article LXVI. When there is a vacancy in the post of Prime Minister, or upon the convocation of the Diet after a general election, the Cabinet shall resign en masse.

Article LXVII. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article LXVIII. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet, and exercises supervision and control over various administrative branches.

Article LXIX. The Cabinet, in addition to other general administrative functions, shall:

Administer the law faithfully; conduct affairs of State.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

In accordance with standards established by law, administer the civil service.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to carry out the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article LXX. All laws and cabinet orders shall be signed by the competent Minister of State, and countersigned by the Prime Minister.

Article LXXI. The Ministers of State, during their tenure

of office, shall not be subject to legal action without the consent of the Prime Minister, but the right to take that action is not impaired hereby.

CHAPTER 6
JUDICIARY

Article LXXII. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws enacted pursuant thereto.

Article LXXIII. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affair

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXXIV. Removals of judges shall be accomplished by public impeachment only unless judicially declared mentally or physically incompetent. No disciplinary action shall be administered by any executive organ or agency.

Article LXXV. The Supreme Court shall consist of such number of judges as may be determined by law; all such judges shall be appointed by the Cabinet and shall be retired upon the attainment of the age as fixed by law.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House

of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show that they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraphs shall be prescribed by law.

All such judges shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVI. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten years with privilege of reappointment, provided that, they shall be retired upon the attainment of the age as fixed by law. The judges of the inferior courts shall receive, at regular, stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXVII. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article LXXVIII. Trials shall be conducted and judgment declared publicly. Where, however, a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press, and cases wherein the rights of the people as reserved in Chapter 3 of this Constitution are in question, shall be conducted publicly without exception.

CHAPTER 7

FINANCE

Article LXXIX. The power to administer national finances shall be exercised as the Diet shall determine.

Article LXXX. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article LXXXI. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article LXXXII. The Cabinet shall prepare and submit to the Diet for its consideration and decision an annual budget for each fiscal year.

Article LXXXIII. In order to provide for unforeseen deficiencies in the budget a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet shall be held accountable to the Diet for all payments from the reserve fund.

Article LXXXIV. All property of the Imperial Household, other than the hereditary estates, shall belong to the State. The income from all Imperial properties shall be paid into the national treasury, and allowances and expenses of the Imperial Household, as defined by law, shall be appropriated by the Diet in the annual budget.

Article LXXXV. No public money or property shall be appropriated for the use, benefit or support of any system of religion, or religious institution or association, or for any charitable, educational or benevolent purposes not under the control of public authority.

Article LXXXVI. A final audit of all expenditures and revenues of the State shall be made annually by a board of audit and submitted by the Cabinet to the Diet during the fiscal year

immediately following the period covered.

The organization and competency of the board of audit shall be determined by law.

Article LXXXVII. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER 8
LOCAL SELF GOVERNMENT

Article LXXXVIII. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article LXXXIX. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their legislative assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article XC. Local public entities shall have the right to manage their property, affairs and government and to frame their own charters within such laws as the Diet may enact.

Article XCI. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER 9
AMENDMENTS

Article XCII. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative

vote of a majority of all votes cast at a special referendum thereon or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be proclaimed by the Emperor, in the name of the People, as an integral part of this Constitution.

CHAPTER 10
SUPREME LAW

Article XCIII. The fundamental human rights by this Constitution guaranteed to the people of Japan result from the age-old struggle of man to be free. They have survived the exacting test for durability in the crucible of time and experience, and are conferred upon this and future generations in sacred trust, to be held for all time inviolate.

Article XCIV. This Constitution and the laws and treaties made in pursuance hereof shall be the supreme law of the state and no public law or ordinance and no imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Article XCV. The Emperor or the Regent, the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

CHAPTER 11
SUPPLEMENTARY PROVISIONS

Article XCVI. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other

preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article XCVII. As regards those who hold peerage on the effective date of this Constitution, their title shall remain valid for their lives, but no right of peerage shall from this time forth embody within itself any power of government.

Article XCVIII. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall sit as the Diet on that date and until such time as the House of Councillors shall be constituted.

Article XCIX. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article C. The Ministers of State, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on the effective date of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

Paraphrase extracts of radio message 3 May 1946.

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B-171.1

Paraphrase extracts, Radio C-60606, dated 3 May 1946.

"There should be assurance that the Japanese constitution is amended to provide for government responsible to an electorate based upon wide representative suffrage. Provision should be made that executive branch of government derive its authority from and be responsible to the electorate or to a fully representative legislative body. If Emperor institution is not retained, constitutional safeguards against that institution will obviously not be required but provision should be made for:

(1) complete control by an elected congress of financial and budgetary matters,

(2) guarantee of fundamental civil rights to all persons within Japanese jurisdiction, not to Japanese only, and

(3) action by head of state only pursuant to authority expressly delegated to him.

If Emperor is retained, following safeguards in addition to those enumerated above would be necessary:

(1) a cabinet to advise and assist the Emperor should be chosen with advice and consent of and responsible to representative legislative body,

(2) Emperor should be required to initiate amendments to constitution recommended by cabinet and approved by legislative body,

(3) no veto over legislative measures should be exercised by other bodies such as House of Peers or Privy Council,

Paraphrase of C-60606 (Cont'd):

(4) legislative body should be permitted to meet at will, and

(5) any ministers for armed forces which may be permitted in future should be civilians and all special privileges of direct access to throne by military should be eliminated.

We desire that you continue your discussions and keep department informed and concur in general in the review summarized in your CA-53137 October 11."

Again, in SWNCC-228 dated 7 January 1946, the United States laid down still more detailed policy rules, concluding that:

"A. The Supreme Commander should indicate to the Japanese authorities that the Japanese governmental system should be reformed to accomplish the following general objectives:

(1) A government responsible to an electorate based upon wide representative suffrage;

(2) An executive branch of government deriving its authority from and responsible to the electorate or to a fully representative body;

(3) A legislative body, fully representative of the electorate, with full power to reduce, increase or reject any items in the budget or to suggest new items;

(4) No budget shall become effective without the express approval of the legislative body;

(5) Guarantee of fundamental civil rights to Japanese subjects and to all persons within Japanese jurisdiction;

Paraphrase, C-60606 (Cont'd):

(6) The popular election or local appointment of as many of the prefectural officials as practicable;

(7) The drafting and adoption of constitutional amendments or of a constitution in a manner which will express the free will of the Japanese people.

B. Though the ultimate form of government in Japan is to be established by the freely expressed will of the Japanese people, the retention of the Emperor institution in its present form is not considered consistent with the foregoing general objectives.

C. If the Japanese people decide that the Emperor institution is not to be retained, constitutional safeguards against the institution will obviously not be required but the Supreme Commander should indicate to the Japanese that the constitution should be amended to conform to the objectives listed in A. above, and to include specific provisions:

(1) that any other bodies shall possess only a temporary veto power over legislative measures, including constitutional amendments approved by the representative legislative body, and that such body shall have sole authority over financial measures;

(2) that the legislative body may meet at will;

(3) that the ministers of state or the members of a cabinet should in all cases be civilians.

D. The Japanese should be encouraged to abolish the Emperor institution or to reform it along more democratic lines. If the

Japanese decide to retain the institution of the Emperor, however, the Supreme Commander should also indicate to the Japanese authorities that the following safeguards in addition to those enumerated in A. and C. above would be necessary:

(1) that when a cabinet loses the confidence of the representative legislative body, it must either resign or appeal to the electorate;

(2) that the ministers of state, chosen with the advice and consent of the representative legislative body, should form a cabinet collectively responsible to the legislative body;

(3) the Emperor shall act in all important matters only on the advice of the cabinet;

(4) the Emperor shall be deprived of all military authority such as that provided in Articles 11, 12, 13 and 14 of Chapter I of the constitution;

(5) the cabinet shall advise and assist the Emperor;

(6) the entire income of the Imperial Household shall be turned into the public treasury, and the expenses of the Imperial Household shall be appropriated by the legislature in the annual budget."

Finally, at culmination, about the middle of February, when a number of drafts had been discussed at length and the question had reached a state of intense universal consideration, the cabinet at the government's request, joined in almost constant conference with SCAP's Government Section from which

discussions finally emerged the government draft. It thus will be seen that I have acted meticulously in accord with the instructions received from the United States Government, and been guided throughout by its policies in assisting the Japanese Government and people in the development of constitutional reform.

It has been my purpose, in conformity with the principles laid down at Potsdam as developed in aforestated American policy, that no formal action be taken on any constitutional reform finally adopted by the Japanese people if it reasonably conforms to existing Allied policy, in order to avoid any implication which might arise, even from the formality of approval by the Allied Powers, that such reform resulted from allied pressure. Such policy and its purpose was clearly stated in SWNCC-228, reading in part as follows:

Para. 5. "Only as a last resort should the Supreme Commander order the Japanese Government to effect the above-listed reforms, as the knowledge that they had been imposed by the allies would materially reduce the possibility of their acceptance and support by the Japanese people for the future";

Conclusions, Para. 4.a.(7): "The drafting and adoption of constitutional amendments or of a constitution in a manner which will express the free will of the Japanese people"; and

Appendix B, Para. 7: "Only as a last resort should a formal instruction be issued to the Japanese Government specifying in detail the reforms to be effected".

Paraphrase, C-60606 (Cont'd):

The only policy decision handed down thus far by the Far Eastern Commission in the matter of constitutional reform had the effect of reversing this all important policy provision by its requirement of the formality of its approval as a pre-requisite to the final adoption of any constitutional reform by the Japanese people. The purpose underlying such requirement is not clear, but its effect is capable of doing immeasurable harm to the occupation as it will undoubtedly prejudice many Japanese people against the instrument itself, who will look upon it as a thing forced upon Japan at the point of Allied bayonets, however admirable its purposes and noble its aims. It will completely negative the expressed purpose underlying aforestated policy that the drafting and adoption of a constitution be done "in a manner which will express the free will of the Japanese people." There can be no free will when the threat of disapproval by the allied powers overhangs all deliberation, discussion and debate on the constitutional issue. My own personal approval of the Government Draft, evolved from joint studies between the Japanese Government and SCAP Headquarters, was designed merely to give moral support and encouragement to the liberal forces struggling in Japan for reform against tradition, prejudice and reaction. It was given by me in direct compliance with my American policy directive to encourage the establishment of democratic processes in Japan in implementation of the requirement of the Potsdam Declaration that the "Japanese government shall remove all

Paraphrase, C-60606 (Cont'd):

obstacles to the revival and strengthening of democratic tendencies among the Japanese people", and because the suggested draft embodied all the principles theretofore enumerated as a guide to constitutional reform. It did not commit the Allied Powers in any way or even the Supreme Commander himself except on general principles, nor did it restrict in any way or degree the freedom of discussion and action by the Japanese Government and people upon the issues involved. This was understood fully by both the Japanese Government and people as eloquently demonstrated by the subsequent public discussion still in progress which has occupied large sections of the Japanese daily press.

The Far Eastern Commission, by its terms of reference, is a policy-making body with no executive powers, responsibilities or functions in the administration of Japan, which are reserved exclusively to the Supreme Commander. While it has the right of review of any action taken by the Supreme Commander which involves its own "policy decisions within its jurisdiction", it is not empowered, in my belief, to require prior approval of any action taken either by the Supreme Commander or the Japanese Government to implement, fulfill or enforce the terms of surrender. It thus far has formulated no action setting up "policies, principles and standards" to govern in the revision of the Japanese constitution. It has not given the slightest indication of whether it concurs or non-concurs with the stated American policy, other than that contained in its apparent reversal of American policy, designed to maintain the voluntary character

of Japanese action on constitution reform. Approval or disapproval of acts of the Japanese Government as a prerequisite to their validity is a function wholly executive in character. For the Far Eastern Commission to assert such power seems a clear violation of the terms of the Moscow Agreement and the interpretation of the American Government thereof, as publicly stated by the Secretary of State. To the contrary, it appears patently clear that the function of the Far Eastern Commission in the matter of constitution reform for Japan is limited to the formulation of guiding policy within the framework of the Potsdam Declaration and the surrender terms. The Supreme Commander, in the absence of any such policy statement from the Far Eastern Commission, is clearly unrestricted in his authority to proceed in the implementation of the Potsdam Declaration and surrender terms as he interprets them or may be guided by developed American policy in point. In this matter speed is of the essence due to the fact, too readily lost sight of, that the Japanese people are now subject to their present wholly undemocratic constitution and will remain subject thereto so long as reform is delayed. Such delay, furthermore, but serves the interests of those who would much prefer that such reforms be not instituted at all.

It is too early to forecast either the course or time-table of legislative action once the government draft constitution is formally submitted to the Diet, nor is it known whether any further procedure, such as by constitutional convention or

Paraphrase, C-60606 (Cont'd):

plebiscite, will be determined upon for direct ratification, by the people. I personally believe that provision for such direct ratification, however, is both unnecessary and undesirable. It would be cumbersome, and involve further protracted delay, with little likelihood of beneficial result. The new constitution is now being evolved on an entirely voluntary basis by the Japanese government and people; the government's draft was squarely before the electorate throughout the recent election campaign; it has been and is being fully discussed in all circles and through all media, and its final form is still problematical. The Diet, which will act upon it as required by the existing constitution, is composed of a membership elected with the express view of acting upon it. The important thing is to encourage the people, by their own voluntary action and method, to establish the reforms sought under allied policy, and to do so as quickly as possible; thereafter further refinement is always within the people's right, with such leadership or direction as we may determine should be extended.

All individuals and political parties and various private groups have proposed constitutions and constitutional provisions. Such proposals have, throughout the election campaign, been widely disseminated and debated in the vernacular press and radio, and all were considered, as were the existing constitutions of nearly all of the free peoples of the earth, in the development of the governments' draft. As I stated when I indicated my approval thereof, it constitutes a realistic compromise between the several divergent political faiths. The

Paraphrase, C-60606, (Cont'd):

consideration of the constitutional question by the people has been thoroughly democratic, and when it emerges in final form it will probably have been the most freely discussed and considered constitution in history. As well over 95% of the Japanese people are clearly disposed to retain the Imperial institution, while free discussion thereon has been encouraged, no effort has been made to persuade them to abolish the same. Such action would do violence to the spirit of the Potsdam Declaration which left this matter to the free will of the Japanese people. The drastic reformation of the Imperial institution along democratic lines, with its survival rendered subject to the people's will as proposed in the Government's Draft, bespeaks the encouragement SCAP has given this reform. The Commission could render no better service to the cause of democracy than to permit the Japanese Government and people, as I propose to do, to proceed unshackled, unhindered, and in complete freedom to work out their constitutional reforms, examining the situation only after action thereon has been completed to determine that the results achieved meet allied standards.

I strongly urge the Commission to reorient itself from consideration of the past, to meet those great issues on which policies have not yet been determined; to accept the proposition that the sweeping measures which the United States of necessity alone has taken with all attendant risks, hazards and costs in the occupation of Japan have been within the spirit of Allied

Paraphrase, C-60606 (Cont'd):

purposes, and are now matters which have been largely accomplished and upon all of which action is proceeding in accordance with determined policies; to proceed at once to decide policies to govern in the solution of the remaining vital problems, foremost of which involve reparations and the position which Japan is to occupy in the postwar world - on the solution of which rests the entire question of Japan's internal economic and social reconstruction; and, in full mutual confidence and friendly spirit, to work closely and constructively with the Supreme Commander in serving the common purpose. Thereby, and thereby alone, may the objective of the Moscow Agreement, in constituting the commission as an agency to shape allied policy for the guidance of the Supreme Commander in the discharge of his executive responsibilities, be fully and harmoniously reached. For my part, the Commission may be assured that I as Supreme Commander will make available to it copies of all periodic and special reports covering the administration of Japan, and any other special information which it may from time to time specifically desire, and do everything else reasonably within my power to facilitate discharge of the Commission's responsibility in the overall task to which the allied nations jointly are committed.

MACARTHUR.

Check sheet to C-in-C re Developments during Diet Debate, dated 17 July 1946.

B-182.1

CW/CLK/ef

Developments on Proposed Constitution for Japan.

Govt Sect C-in-C 17 July 1946

1. In view of repeated statements by Minister of State Kanamori in replying to interpellations on the proposed new Constitution for Japan by members of the Diet to the effect that the new Constitution will mean no change in the "national polity" (KOKUTAI) of Japan, and the discrepancies between the Japanese and English versions of the Constitution in certain key words (for example, the use of the Japanese word for "supreme" instead of "sovereign" in speaking of the people's sovereignty), I am encouraging the closest scrutiny by members of the Government Section staff of the Constitution in the Japanese text and the commentaries explaining it in the Diet. I have decided to treat these matters as technical discrepancies resulting from the best of faith on the part of the Japanese which can be ironed out on a technical working level.

2. I fully realize your desire to refrain from any open interference in matters relating to the Constitution and your view that much weasel-worded explanation is offered to persuade the two-thirds majority required by the Government for its adoption and I have passed these views on to the members of my staff. It is my firm conviction, however, that we cannot fail to maintain the closest surveillance of the Government's draft in order to detect subtle changes which fundamentally alter the connotation and meaning of the words in the English translation and which can in all probability be corrected on an informal technical level of discussion.

3. In view of the possibility that the hand of Matsumoto is still contriving to shape the Constitution to his views, I believe it desirable to call these matters to your attention. Kanamori's explanations are consistent with Matsumoto's views as explained in written memoranda submitted to this Section when the Matsumoto draft was presented to you by Yoshida and which was wholly unacceptable to you. Kanamori's statements that the new Constitution means no change in "national polity" is laying the foundation for the undermining of the democratic spirit of the new Constitution and is paving the way for the return to the old system of authoritarian government. The term was usually surrounded with an aura of mysticism but in reality "national polity" summarizes briefly and completely the chauvinistic and militaristic political philosophy of the old regime in Japan. It is generally understood to mean a state centering around the Emperor; a people obedient to and subservient to the authority of the executive agencies charged by the Emperor with the responsibility of governing the country; the "uniqueness" and, therefore, superiority of the Japanese as a race because they are the only ones to possess this "national polity"; the negation of the principles of domestic democracy and international cooperation toward which the Japanese are supposed to be striving.

PAD FILE

Check Sheet fr Govt Sect to C-in-C, subj: "Developments on Proposed Constitution for Japan", dtd 17 July 1946.

4. If Kanamori is successful in establishing the idea that the new Constitution is based on this unchanged concept of "national polity", it will be possible to defeat the democratic letter of the new Constitution by interpreting it in terms of this spirit, which will have been established as being the philosophical basis of the Constitution. The will of the people will be constantly subjugated to the mystic concept of the "national polity" which is considered to be something inclusive of, but at the same time above and beyond the will of the people. What Kanamori is currently doing is writing the commentaries on the Constitution which will form the basis of future interpretations. The pattern of the old Meiji Constitution is being followed again. Kanamori is planning to publish a "collection of comments prepared by the authors of the draft." This will undoubtedly be regarded as being as authoritative as Prince Ito's comments on the Meiji Constitution. No detail is being overlooked. If the Constitution were put into effect on 11 February 1947, as reported in the press, it would tie the new and supposedly democratic document to the "national polity" by associating it with the most nationalistic holiday in Japan.

5. If the Kanamori thesis on the "national polity" becomes established without further explanation the basic political aims of the occupation will have been seriously undermined. The subject matter has been explored in a technical conference between Kanamori and Colonel Kades of this Section with encouraging frankness and in an atmosphere of friendliness and mutual understanding of the issues. Resulting from this conference, Kanamori tentatively agreed, subject to confirmation by the Cabinet, that appropriate changes in the Japanese text would be made to conform to the views of this Section. Kanamori further agreed to readjust his commentary in the course of the House proceedings.

6. The general subject has been covered in a memorandum prepared in this Section, attached hereto, which, though somewhat legalistic in character, is submitted to indicate the dangers inherent in the Japanese text in the light of Kanamori's previous commentary.

1 Incl:
Memo for Ch, Govt Sect, subj:
"Differences between Japanese
and English Versions of the
Draft Constitution", dtd
11 July 1946.

C. W.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

11 July 1946

MEMORANDUM FOR THE CHIEF, GOVERNMENT SECTION

SUBJECT: Differences between Japanese and English Versions of the Draft Constitution.

1. A comparison of the official English translation of the revised Japanese Constitution, dated 22 April 1946, with the Japanese version as presented to the Diet discloses significant differences, of which the more important are considered in this memorandum. These differences are of such fundamental character that if not corrected the present Constitution will represent nothing more than a revised version of the Matsumoto draft.

THE SOURCE AND DISTRIBUTION OF SOVEREIGN POWERS

2. The repeated interpellations in the Diet and wide discussions in the press as to the source and distribution of the sovereign powers under the new Constitution are indications that the Japanese text is unclear on this point and differs, therefore, from the official English version. Article 1 clearly states in English that the Emperor derives ". . . his position from the sovereign will of the people." The Japanese version has changed the word "sovereign" to "supreme", using for the expression as a whole characters which convey no conception of sovereignty in the juristic sense of the word. In the Preamble where the English version states "do proclaim the sovereignty of the people's will" again the word "supremacy" has been substituted for sovereignty. Thus sovereignty is not located in the people as the basis of the state or nation, but has been shifted to the nation comprising the people, the Emperor and the government.

3. This shift paves the way for the distribution of the exercise of the powers of sovereignty among four, instead of three, organs of government. These organs are the Emperor, the Cabinet, the Diet and the Judiciary. The distribution of such powers among the latter three is quite proper, as provided for in Article 37 where it states that the "Diet shall be the highest organ of state power," in Article 61 which states that "Executive power shall be vested in the Cabinet" and in Article 72 which states that "The whole judicial power is vested in a Supreme Court, etc. . . . "

4. This distribution of sovereign powers among these three organs should have been complete and is so in the English version. The Chapter on the Emperor nowhere states or implies that he should possess or exercise a part of the sovereign power; on the contrary, he is to exist as the symbol of the state and exercise only ceremonial functions. Article 4 specifically states that he shall never have powers related to government. Yet the Japanese version reads:

"The Emperor shall perform only such state affairs (a much more positive dynamic word than "functions" in the English version) as are provided for in this Constitution. He shall not have powers related to government (or "politics"). The Emperor may delegate his powers (not "functions" as in the English text) as may be provided by law."

5. The second and third sentences appear on the surface to be contradictory. This is even more evident in the Japanese version, where the word for powers is the same in both sentences. However, if the word for "government" in the second sentence is changed to read "politics" or "political affairs", as the Japanese word can be construed to read, the meaning becomes perfectly clear. The Japanese have never wanted their Emperor to engage actively in government in the sense of politics, or to interfere directly in the administration of government as such. Consequently, they have no objection to including such a prohibition in the Constitution. The forthright statement in the last sentence that the Emperor does have sovereign authority which can be delegated by law and not mere ceremonial functions forces this interpretation of the preceding sentence. One of the characters used for the term "powers" is exactly the same one used in the above-mentioned three articles allocating powers among the Cabinet, Diet and the Judiciary.

6. The bureaucrats have thus reserved to the Emperor sovereign prerogatives. As an organ of the state, he shares the totality of sovereign power with the other three organs of state. This establishes in the new Constitution the well-known Minobe theory that the Emperor is an organ of the State propounded decades ago against the prevailing theory and practice that he was the embodiment of the State itself. It is significant that Minister Kanamori has been an adherent of the Minobe theory.

7. Having thus successfully established the Emperor as one of the sovereign organs of state, it will not be difficult for the bureaucrats, both in the Imperial Household Law and in the Cabinet Organization Law, to strengthen and define his prerogatives far beyond the limited ceremonial functions specified in the chapter on the Emperor in the Constitution. For example, they can and probably will establish a special Imperial Affairs Ministry and within it create a Council or a Bureau entrusted with the major powers at present exercised by the Privy Council. All laws, treaties, and amendments to the Constitution would no doubt be submitted first to this Ministry for its approval before the Emperor was advised to promulgate them. By the fact that it was known to enjoy the confidence of and have access to the Emperor, it would quickly attain a special status in the Cabinet. It could be staffed with the most learned and conservative men of the country who would hold their position for years under the civil service regulations. With such prestige it could exercise a powerful veto power over all acts of the other organs of government.

8. These facts emphasize the necessity for the closest surveillance on the part of SCAP of the provisions of the Imperial Household Law and the Cabinet Organization Law. More than that, it is imperative that Article 4 be revised to strip powers of sovereignty from the Emperor and leave him the purely sentimental, ceremonial and symbolic figure which would constitute a democratization of the Tenno system and pave the way for a really democratic government based upon the freely expressed will of the Japanese people. Retention of Article 4 as it now stands in the Japanese version would enable bureaucratic and oligarchical cliques to exercise a preponderant control over affairs of state from behind the Throne - the very antithesis of a democratization of the Tenno system.

THE SUPREME LAW OF THE LAND

9. In Article 94 the Japanese bureaucrats have made a deliberate effort to place the laws applying the new Constitution on a plane of juridical equality with the Constitution itself. A correct translation of Article 94 as it stands in the present Japanese text reads as follows:

"This Constitution together with the laws and treaties enacted on the basis thereof shall be the supreme body of laws and regulations of the land. Laws, ordinances, Imperial rescripts and other acts related to state affairs which in whole or in part conflict therewith shall be invalid."

10. The full effect of this obvious distortion of the official English translation of Article 94 becomes apparent when the implications of Article 96 are taken into consideration. Article 94 distinguishes a special group of laws and regulations which shall be associated and stand on a virtual par with the Constitution. This supreme corpus of law is set apart from all other laws, ordinances, etc. passed before the adoption of the Constitution as well as after its enforcement. Article 96 broadly defines the laws and regulations which are thus to be given a special status along with the Constitution. As stated therein they are the laws and regulations necessary for placing the Constitution into effect. They are all to be passed by the Diet either in the present session or at a special session to be held sometime during the six month period between the promulgation of the Constitution and the Edict enforcing it. They are to be issued by Imperial decree either before or on the day the Constitution itself goes into effect, thereby assuring their status as part of the supreme corpus of laws of the land.

11. Article 96 places no limitation on the scope and nature of these associated laws and regulations. There is only the indication that they are to include such "necessary" laws as those providing for the election of members of the House of Councillors and the procedure for the convocation of the Diet. Information from a variety of sources indicates that in addition to these two laws there will be associated with the Constitution a revised Imperial Household Law; a law for the organization of the two Houses, including detailed procedural rules; a Cabinet organization law; rules and regulations relating to ceremonies; and laws reorganizing the judiciary and local government. In addition, portions of the civil and criminal codes most fundamentally affected by the provisions of the new Constitution will probably be revised.

12. These laws and regulations will thus define and carry into effect the major provisions of the Constitution. According to Article 94 they will represent together with treaties and the Constitution the "supreme law" of the land. All other laws, ordinances and regulations not in accord with them will be invalid. Consequently, the power of the Supreme Court as provided in Article 77 to review the constitutionality of these associated laws will be drastically curtailed and an effort by a later Diet to amend any of the fundamental provisions of these laws will be virtually as difficult as the amendment of the Constitution itself.

13. Further, the bureaucrats will be able to secure approval for the associated laws which they have drafted from a Diet sitting under all the limitations of the Meiji Constitution. The House of Peers and the Privy Council will continue to act upon these laws for six months after promulgation of the Constitution which provides for abolition of the two bodies. Thus the bureaucratic adherents of the ancien regime and not the elected representatives of the people sitting under the liberal democratic provisions of the new Constitution will determine and fix the limitations and distribution of the powers of government to the enhancement of the power of the executive branch which they represent as against the legislative and judicial branches. In so doing, they will be employing the same technique utilized by their predecessors in adopting the Meiji Constitution and its associated laws.

14. If the draft Constitution now before the Diet is passed with Articles 94 and 96 unchanged, it is apparent that all the laws drafted by the bureaucrats during the six month period will have to be first carefully examined and approved by SCAP before being submitted to the Diet during the six month period. SCAP will have to stand between the bureaucrats and the people to guarantee to them and their elected representatives the full enjoyment of the democratic rights conferred upon them by this new Constitution. The policy should be to allow only those laws and regulations to be presented to the Diet which are absolutely necessary to place the Constitution into effect. All others should be held over for submission to the first Diet sitting under the new Constitution. Laws passed after the Constitution goes

into effect will not fall within the corpus of laws defined under Article 94 as constituting the supreme law of the land and can, therefore, be reviewed by the Supreme Court and be altered as the need arises by subsequent sessions of the Diet.

15. Should the draft Constitution be altered so as to have it come into effect immediately upon promulgation, in accordance with the generally accepted practice of constitution-making, it will still be necessary to examine carefully all government presented bills because of the continuing strangle-hold over the machinery of government which the predominantly reactionary bureaucrats will exercise for at least some time thereafter. The old regime, capped by the theocratic Tenno system, found its support in the militarists, the Zaibatsu and the bureaucrats. The militarists have been destroyed, the power of the Zaibatsu is being undermined, but the power of the bureaucrats remains unimpaired. The rights guaranteed to the people of Japan under the new Constitution afford them their first opportunity to break the age-old grip of the bureaucrats over their lives and to make of their officials democratic servants of the nation instead of autocratic masters. But this opportunity will be lost if the bureaucrats are allowed to force through laws and regulations which will warp the provisions of the new Constitution to serve their own ends even before that Constitution goes into effect.

16. In Articles 94 and 96 they have a powerful potential weapon to accomplish these ends. It is SCAP's responsibility to prevent their use of that weapon and to assure the establishment of a government in Japan controlled by and responsible to the people through their democratically elected representatives in the Diet. The formulation and adoption of a democratic Constitution marks but the first half of the battle. To assure final and enduring victory, the struggle against the bureaucratic clique must continue until the people are able fully to express their will and exercise their control over the government through their responsible representatives in the Diet.

Noted: CLK

CYRUS H. PEAKE

T. A. BISSON

KENNETH COLEGROVE

Government Section proposed changes in Japanese draft.

26

B-190.1

PROPOSED CHANGE IN WORDING OF CONSTITUTION DRAFT

	Japanese Version	Official Translation	Appropriate Version
Preamble:	SHIKŌ (至高) "supremacy" of the people is will. First character is superlative; second means "high."	"....sovereignty of the people's will."	SHUKEN ZAIMIN NO GENSOKU O SEN GEN (主權在民ノ原則ヲ宣言) ".... do proclaim the principle that sovereignty resides in the people."
Article 1.	SHIKŌ "...people's supreme will."	"....sovereign will of the people."	SHIKŌ DE ARU SŌI (至高デアル總意) "....supremacy of the people's will."
Article 4.	SEIJI (政治) "...powers related to politics." First character means "politics;" second means "government."	"related to government."	TŌCHI (統治) - government in the sense of ruling power. "....related to government."
Article 4.	KENNŌ (權能) ".....may delegate his powers" The first character means "authority;" the second means "capacity."	"....may delegate his functions."	JIMU (事務) *- affairs, duties, or functions. "...may delegate his functions."

Article 4. The last clause, "The Emperor may delegate, etc." should be added at the end of Article 3 in the interests of better draftsmanship.

Article 5. KENNŌ, as in Article 4 "shall exercise his powers..."

"...shall exercise his functions..."

JIMU should be substituted "..shall exercise his functions..."

.....

Article 5 DAI IKKŌ (第一項)
"paragraph one" should be omitted, since Article 4 will now have only one paragraph.

.....

Article 7. SHOSHU (召集)
(2) "convoke the Diet"

"convoke the Diet"

SHOSHU O SHŌNIN
(召集, 認證)
"attest the convocation.."

(3) NAISAN (解散)
"dissolve the House of Rep"

"dissolve the House of Rep"

KAISAN O SHŌNIN
(解散, 認證)
"attest the dissolution.."

(4) KŌJI (公示)
"proclamation" of gen'l elect.

"proclamation" of gen'l elect.

KŌJI O SHŌNIN
"attest the proclamation.."

.....

Article 49. KETTEI (決定)
"decide to call..."

"may call...."

omit KETTEI
should say, "may convoke"

.....

Article 49. Same with regard to convocation on demand of Diet members.

.....

Article 50. MOTOMERU (求メル)
"may demand emergency session."

"may....convoke"

omit MOTOMERU
should read "may convoke"
use SHOSHU ( )

Article 90. GYŌSEI (行政)
administration - "to carry out their administrations"

"to manage their.....government"

TOCHI (統治)
"to manage their government" in the sense of ruling

.....

Article 90 JŌREI (條例)
means "regulations" - to enact "regulations" - First character means "item"; second one means "regulations."

"to frame their charters"

KENSHŌ (憲章)
"charter" - The first character is the first character of the word- "constitution" meaning "law" the second is the character for "chapter " (division of a book etc.)

.....

Article 94 Omit - ".....and the laws and treaties made in pursuance hereof."

Memorandum to Chief of Staff, 9 January 1947.

27

B-193.1

9 January 1947

MEMORANDUM FOR THE CHIEF OF STAFF

SUBJECT: Policy Toward Announcing Provisions for the Review of the New Japanese Constitution.

The attached reports represent the policy of the State War and Navy Co-Ordinating Committees as contained in SWNCC 228/12, adopted 18 December 1946.

"The United States Government will not agree to the publication of the policy decision contained in FEC 031/41 until, after consultation with General MacArthur, the United States Government concludes that such publication is consistent with United States foreign policy and with the accomplishment of Allied objectives in Japan."

FEC 031/41, adopted 17 October 1946, provides for a review of the Japanese Constitution by either the Diet, the Far Eastern Commission, or the Japanese people, or by all of them.

Such proposed review is to be permissable not less than one year after the enforcement of the Constitution, 3 May 1947, no more than two years after that date.

The purpose of such reivew would be: 1) To afford the Japanese people an opportunity to reconsider the Constitution in the light of experience; 2) to enable the FEC to assure itself that the Constitution fulfills the terms of the Potsdam Declaration and other controlling documents; 3) to determine whether the Constitution expresses the free will of the Japanese people.

When amendment of the original proposals removed these difficulties, the FEC accepted the proposal for an eventual review of the Constitution. Mr. Makin then advised announcement of the action. Delay, he said, might subject the FEC to the charge that it had broken faith with the Japanese by not revealing the existence of the review proposal.

General McCoy agreed to forward a statement of the action to the Supreme Commander for his comment but declared that the time for announcement of the action in Japan was a matter for consideration after the opinion of the Supreme Commander had been received.

The Supreme Commander's reply points out that the purpose of the review suggestion is obscure and unrealistic. He recommended against publicity until at least a year after 3 May 1947.

COURTNEY WHITNEY
Brigadier General, U. S. Army
Chief, Government Section

Col Kades

Check sheet to Adjutant General dated 23 June 1948.

28

B-194.1

28

Drafts of Japanese Constitution CW/CIK/rh

Government Section Adjutant General 23 June 1948

1 1. Enclosed in duplicate are successive drafts of the new Japanese Constitution promulgated 3 November 1946 and effective 3 May 1947.

2. These documents are of considerable historical importance and constitute source material of great value to scholars and historians.

3. Request information as to the disposition of these documents in order that an appropriate notation may be made in the Government Section's files.

2 Incl.
Duplicate sets of drafts of
new Japanese Constitution

---------- C. W. ----------

Acknowledgment of 28 June 1948.

B-195.1

29

2

From: SRS To: CS

Maj. Byers, 26-5541
Date: 28 June 1948

Subject documents have been filed in SCAP Reference Library, SRS.

2 Incl.
W/D

C. H. U.

Check sheet to Adjutant General dated 15 July 1948.

30

B-196.1

30

CW/CLK/HL/mmr

Hearings on New Japanese Constitution

Government Section Adjutant General 15 July 1948

1. 1. Enclosed are duplicate sets of the complete hearings in Privy Council, House of Representatives, and House of Peers plenary sessions and committee meetings on the new Japanese Constitution, prior to its adoption by the Diet.

2. These documents are of considerable historical importance and constitute source material of great value to scholars and historians.

3. Request information as to the disposition of these documents in order that an appropriate notation may be made in the Government Section's files.

1 Incl.
Hearings on new Japanese Constitution (in Dup.)

- C.W. - - - - - - - - - -

Col. Kades

Constitution as enacted, in Japanese.

B-197.1

the original is missing